

# Legal Rights Of Persons With Disabilities



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*California  
Department  
of Justice*

**"LEGAL RIGHTS OF PERSONS WITH DISABILITIES,"  
SECOND EDITION\***

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## INTRODUCTION

### California and Federal Law

This handbook discusses both California and federal laws in explaining the rights of disabled people. California and federal law should be examined together to get a complete picture of the law on a particular topic. In some areas California law provides more legal protection or is more comprehensive; in other areas federal law is more helpful.

### Statutes, Regulations, and Cases

"The law" usually consists of a combination of statutes, regulations, and cases. Statutes are laws passed by legislators either in the state Capitol or in Congress. Statutes are generally fairly short and often do not describe the details of how the law will be enforced or what specifically will constitute a violation of law. Examples of citations to statutes are:

29 U.S.C. § 793

Cal. Gov. Code, § 12900 et seq.

The first citation above is to a portion of the federal Rehabilitation Act, which can be found at Section 793 of the 29th volume of the United States Code. The second citation is to the California Fair Employment and Housing Act, which begins at section 12900 of the California Government Code. "Et seq." means the statute continues in the following sections.

Various government agencies are often charged with developing regulations to carry out the mandates of statutes. These regulations usually describe the "nuts and bolts" of a statute's administration. Examples of citations to federal and California regulations are:

49 C.F.R. § 27

Cal. Code Regs. tit. 22 § 50000 et seq.

"C.F.R." stands for Code of Federal Regulations. These are regulations enacted by federal agencies under the authority granted them by statutes.

Finally, when cases go to court, judges issue opinions which resolve disputes in interpreting statutes and regulations. Examples of citations to federal and state cases are:

(1982) 458 U.S. 176

(1982) 131 Cal.App.3d 54

An analysis of statutes, regulations, and cases yields the current state of rights and protections, which change, over time as the law changes.

#### What Action Can Individuals Take?

Complaints - Many agencies are authorized to allow people who believe they have experienced discrimination or have been denied other rights to file a complaint. The agency may then investigate the complaint, and if it finds that violations of law have occurred, the agency can impose various sanctions on the violator and award various remedies to the individual who filed the complaint ("complainant.")

Lawsuits - Individuals who experience discrimination or other violations of law can often file a lawsuit in a court. It may be necessary to go through the agency ("administrative") complaint process first. Contact the responsible agency as soon as possible to find out when and if you can file a lawsuit. Although you may file a lawsuit by yourself without an attorney, you should probably talk with a legal organization or private attorney if you plan to do so.

#### Use Of Language

There is no universally accepted terminology to describe individuals with physical or mental impairments. The most widely accepted seems to be the term "disability," and we have used that terminology throughout most of this book. Most statutes, regulations and cases, however, use the term "handicap," so occasional quotes from or references to those laws will use the statutory language.

# CHAPTER 1

## Employment

### INTRODUCTION

This chapter covers state and federal statutes which promote access to employment opportunities for qualified disabled individuals.

In California, the Fair Employment and Housing Act (FEHA; Gov. Code, § 12900, et seq.) protects the right of physically and mentally disabled individuals to obtain equal employment opportunities with state and local government and most private employers.

On the federal level, the Rehabilitation Act of 1973 (29 U.S.C. § 701, et seq.) prohibits the federal government, federal contractors, and employers who receive federal financial assistance from discriminating against qualified disabled individuals in employment. The Americans With Disabilities Act of 1990 (ADA; 42 U.S.C. § 12101, et seq.) extends those protections to many private employers.

### I. STATE LAW

The FEHA protects the right of individuals to seek, obtain, and hold employment without discrimination on the basis of physical or mental disability.

#### A. Who Is Covered By The California Law?

The definition of "disability" under the FEHA is expansive. It includes both physical and mental disabilities. A physical disability includes a disease, disorder, condition, cosmetic disfigurement or anatomical loss that 1) affects one or more body systems (neurological, immunological, musculoskeletal, special sense organ, respiratory, speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic, lymphatic, skin and endocrine) and 2) limits an individual's ability to participate in major life activities or 3) any other health impairment that requires special education or related services. Any individual who has an illness or defect which is perceived to be disabling is protected. Individuals with conditions which are not currently disabling, but which may present, or may be perceived as presenting a future health risk or physical problem, are protected. Also, an individual who has a history of a disability is protected, even if the disability is no longer present. The California Supreme Court noted in *dicta* that weight may qualify as a protected disability if medical evidence demonstrates that it results from a physiological condition affecting one or more of the basic bodily systems and limits a major life activity. (*Cassista v. Community Foods, Inc.* (1993) 5 Cal.4th 1050.)

Mental disability includes any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Physical and mental disability do not include conditions excluded from the federal definition of disability, such as the unlawful use of controlled substances or other drugs. If the definition of physical or mental disability is broader in the ADA, the ADA definition is incorporated into the FEHA.

The FEHA also forbids discrimination on the basis of medical condition. "Medical condition" refers to cancer or to a health impairment related to, or associated with, cancer, for which a person has been rehabilitated or cured.

California employment discrimination law covers nearly all employers. An "employer" for purposes of the FEHA includes anyone regularly employing five or more persons, whether full or part-time; any person acting as an agent of an employer, directly or indirectly; state and local governments; employment agencies; and labor organizations. However, if the disability in question is a mental disability, the FEHA requires that the employer regularly employ 15 or more persons before it will be covered. (Cal. Gov. Code, § 12926(d)). In comparison, federal law requires employment of 15 or more employees before an employer will be covered, whether the disability is physical or mental. (42 U.S.C § 12111 (5)(A).)

#### B. Employer Defenses to Discrimination in California

An employer may refuse to hire or may discharge a physically disabled person if the person is unable to perform the essential functions of the job. Also, the employer may refuse to hire or may discharge a disabled individual who cannot perform the essential functions of the job in a manner which would not endanger his or her health, or the health and safety of others. These two defenses require a case by case evaluation of each disabled person's abilities and limitations with regard to the specific job in question.

In addition, an employer may discriminate against a whole group of disabled persons if the absence of a particular disability is a bona fide occupational qualification ("BFOQ.") For example, an employer may be able to refuse to hire any person with back problems for a job which requires heavy lifting. However, employers rely upon a BFOQ defense to exclude a group of people only if the employer can prove that all or almost all members of the excluded group cannot presently perform the job in a safe manner. (*Sterling Transit Co. v. Fair Employment Practice Commission* (1981) 121 Cal.App.3d 791.)

#### C. Employers Must Make Reasonable Accommodations for Disabled Employees

Employers must make reasonable accommodations for disabled applicants and employees. However, accommodations which would impose an undue hardship on the employer are not required. Examples of reasonable accommodations are making facilities accessible and restructuring jobs, which might include reassigning or transferring an employee, developing part-time or modified work schedules, acquiring or modifying equipment, and providing readers or interpreters. Minor restructuring of the worksite may be required.

Among the factors to be considered in determining whether accommodations would impose an undue hardship on an employer are an employer's overall budget and number of employees, the costs of accommodations, and the amount of assistance available from the state, federal, and other sources. (Cal. Code Regs., tit. 2, § 7293.9 et seq..)

D. Nondiscrimination In Recruitment

Employers must give equal consideration to disabled individuals in recruitment activities and are required to make reasonable accommodations during the recruitment process. For example, during the interview process, employers may be required to provide interpreters for hearing-impaired individuals or provide rooms which are accessible to wheelchairs. Employers may not ask general questions about an applicant's physical or mental condition. Specific questions about an applicant's present physical or mental fitness, medical condition, physical condition or medical history are permissible only if they are directly related to the job in question. An employer may only condition an offer of employment on the results of a medical exam if all entering employees in similar positions are subjected to an examination. An individual who would be disqualified from employment as a result of a physical exam must be allowed to submit independent medical opinions for consideration before a final determination is made. The exam results are confidential; however, supervisors may be informed of restrictions on or accommodations with respect to an individual's duties, and first aid and safety personnel may be informed of the condition if the condition may require emergency treatment. (Cal. Code Regs., tit. 2, § 7294.0.)

E. Nondiscrimination In Pre-Employment Testing

Employers may not use testing criteria which discriminate, unless the criteria are job-related and no alternative testing method is available. The employer must ensure that test results accurately reflect the applicant's job skills or aptitude for the job, rather than merely reflecting the applicant's disability. Tests of physical agility or strength cannot be used, unless those physical skills are precisely what the test is designed to measure. To accomplish this, the employer must reasonably accommodate the applicant's disability during pre-employment testing, such as by making the site physically accessible. Other forms of accommodations may include providing readers and interpreters, allowing more time for test-taking, and administering alternate tests or individualized assessments. (Cal. Code Regs., tit. 2 § 7294.1.)

F. Nondiscrimination In Fringe Benefits

No employment decision regarding a disabled applicant or employee can be conditioned on the waiver of a fringe benefit. An employer may not discriminate against applicants and employees on the basis of disability in the provision of benefits, conditions, and privileges of employment. (Cal. Code Regs., tit. 2, § 7294.2 (a); Gov. Code § 12940.)

G. Complaint Procedures



If you believe that you have been discriminated against, you may file a complaint with the Department of Fair Employment and Housing (DFEH) within one year of the occurrence of the alleged discriminatory act. If you did not learn of the act of discrimination until after a year had passed, the period for filing may be extended up to 90 days. After the complaint is filed, two avenues of relief are available. The DFEH may attempt to resolve the matter through conciliation and, if necessary, an administrative hearing before the Fair Employment and Housing Commission (FEHC). (Cal. Gov. Code, §§ 12963.7(a); 12965.) Alternatively, the DFEH may issue a "right to sue letter" which allows you to file a lawsuit against the employer directly in court. (Cal. Gov. Code, § 12965.) However, you must exhaust the administrative remedies available from the DFEH before filing a lawsuit in court. In other words, you must file with the DFEH and receive a right to sue letter before a court will hear your case.

If a court or the FEHC finds that an employer discriminated in violation of California law, it may order the employer to stop its unlawful practice and may award reinstatement, back pay, and other relief necessary to compensate you. Compensatory damages may also be available. The Commission may also elect to fine the employer, although the Commission does not have the authority to award punitive damages. (Cal. Gov. Code, § 12970 et seq..) (See the Directory of Services at the end of this handbook for a listing of DFEH offices.)

#### H. Miscellaneous California Employment Discrimination Laws

In addition to the FEHA, there are a number of other California laws that protect disabled employees. For example, each state agency must establish an affirmative action program<sup>1/</sup> to ensure that qualified disabled people have access to positions in the state civil service. State agencies must set annual goals and timetables, and a committee of disabled employees must be established in each agency to advise the director on formulation and implementation of the plan. State agencies must make reasonable accommodations for an otherwise qualified individual's physical or mental limitations, unless such accommodations would impose a hardship on the agency's operations. (Cal. Gov. Code, § 19230 et seq..) Also, any program or activity funded by the state must not discriminate against disabled persons. (Cal. Gov. Code, § 11135 et seq..)

Other anti-discrimination statutes provide that:

- No otherwise qualified person may be denied the right to receive a teaching credential, training, or to engage in practice teaching, on the grounds that the person is an individual with a physical or mental disability. (Cal. Educ. Code, §§ 44337 and 44338.)

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1. Affirmative action programs are subject to court challenge as a result of recent United States Supreme Court decisions; see *e.g.*, *Adarand Constructors, Inc. v. Peña* (1995) 515 U.S. 200. A gubernatorial executive order issued June 1, 1995 ordered state agencies to end preferential affirmative action practices which the Governor believes exceed legal requirements. (Executive Order W-124-95 (1995).) However, affirmative action programs for the disabled may still be legal.

- No person may be denied state employment because of blindness or color blindness, unless normal eyesight is absolutely necessary for the job. (Cal. Gov. Code, § 19701.)
- Discrimination based on physical handicap or medical condition against potential employees on public works projects is prohibited. (Cal. Lab. Code, § 1735.) (Some specific exceptions to this policy are set forth in Cal. Gov. Code, § 12940 et seq..)

## II. FEDERAL LAW

### A. The Federal Rehabilitation Act of 1973

The federal Rehabilitation Act of 1973 generally bars employment discrimination against any otherwise qualified disabled person by federal agencies, federal contractors, and recipients of federal financial assistance. This protection extends to all aspects of employment, including recruitment, hiring, promotion, benefits, social or recreational programs, termination, and any other term, condition or privilege of employment.

These nondiscrimination provisions are implemented by regulations developed by different agencies. Although they differ in some respects, the regulations follow similar guidelines. All are designed to promote equal access to employment opportunities for qualified disabled individuals. (29 U.S.C. § 791 et seq..)

### B. Definition of "Disability"

Under federal law, an individual with a "disability" is defined as a person who:

- has a physical or mental impairment which substantially limits one or more of the person's major life activities (major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working);
- has a record of such an impairment; or
- is regarded as having such an impairment.

(29 U.S.C. § 706 (8)(B); 60-741.2(n).)

This broad definition encompasses many people who have not considered themselves disabled or whose disability is a perceived, rather than a real impediment to job performance. Included are all persons with current or previous physical or mental disabilities, or those regarded as having such disabilities, whether or not they actually exist. For example, an individual who once had childhood epilepsy is protected against discrimination on that basis, even though the condition is no longer present.

The Civil Rights Restoration Act, enacted by Congress in 1988, amended the definition of "handicap"<sup>2/</sup> as it pertained to employment. Excluded from the definition is "one who has a currently contagious disease or infection and . . . is a direct threat to the health and safety of others or is unable to perform the duties of the job." This Act, plus a case decided by the U. S. Supreme Court, establish the rule that someone with a contagious disease, who is not a direct threat to the health and safety of others, and who is otherwise able to perform the job, is an "individual with a disability" protected by the Rehabilitation Act. (29 U.S.C. § 706 (8)(B),(C),(D); *School Board of Nassau County v. Arline* (1987) 480 U.S. 273.)

A "qualified individual with a handicap" or a "qualified individual with a disability" is one who can perform the essential functions of the job in question, with or without reasonable accommodation, without endangering the health and safety of the individual or others. An individual must have the required experience and/or meet the educational requirements for the job. (29 C.F.R. § 1614.203(a)(6); 29 C.F.R. § 60-741.2(t).)

The definition of a qualified individual with a handicap is limited under the Rehabilitation Act. Individuals who are not protected include alcohol and drug abusers whose current use of alcohol or drugs prevents them from performing the duties of the job in question, or whose employment would constitute a direct threat to the property or safety of others, because of current drug or alcohol abuse. (29 U.S.C § 706 (8)(C).)

### C. Federal Agencies

The Rehabilitation Act applies to the entire federal government and to all federal agencies in their capacity as employers. Each agency of the executive branch, including the U.S. Postal Service, must have an affirmative action plan for the recruitment, hiring, placement, and advancement of disabled individuals.<sup>3/</sup> The plan must include a description of the way special needs of disabled persons are being met. If the agency has more than one thousand employees, it must set a goal for employment of people with disabilities. (U.S. Equal Employment Opportunity Commission (EEOC), Management Directive 713, October 6, 1987.)

#### 1. Who Is Protected?

The EEOC has developed regulations which all agencies must follow to comply with the Rehabilitation Act. Discrimination against a "qualified individual with a handicap" who is a federal employee or an applicant for a federal job is prohibited. (29 C.F.R. § 1614.101.) Federal employees who are hired under an "excepted service" program, that is, certified by a vocational rehabilitation counselor, are also protected, and must be given the same equal employment rights as other federal employees.

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2. The term "handicap" was subsequently changed to "disability" under the 1992 Amendments to the Rehabilitation Act.

3. See footnote 1, *supra*.

## 2. Federal Employer Responsibilities

Federal agencies must make reasonable accommodations for a known limitation of an otherwise qualified disabled applicant or employee, unless the agency can demonstrate that the accommodations would impose an undue hardship. Reasonable accommodations include, but are not limited to, making facilities accessible, restructuring jobs, changing work schedules, acquiring equipment or devices, changing exams and providing readers and interpreters. In determining whether accommodations would impose an undue hardship on the operation of an agency, factors to be considered include the overall size of the agency's program, the number and type of facilities, the size of the budget, and the nature and the cost of the accommodations. (29 C.F.R. § 1614.102(a)(8) and 1614.203(c).)

An agency may not use employment tests or other ways of selecting employees which tend to screen out qualified disabled individuals, unless the agency can prove that the test score or selection process is related to the specific job in question and that other testing or selection methods are unavailable. The employment test must reflect an applicant's or employee's ability to perform the functions of the job, rather than focusing on an individual's disability, unless the disability is directly related to the skills being measured for the job. (29 C.F.R. § 1614.203(d).)

Agencies may not ask whether a job applicant is disabled or inquire about the nature and severity of the disability. An agency may ask whether an applicant is able to meet, with or without reasonable accommodations, the qualifications and responsibilities of the position. A pre-employment medical exam may be required only if all new employees are required to take such an exam and the exam results are not used to discriminate unlawfully. (29 C.F.R. § 1614.203(e).)

An agency may ask an applicant to volunteer information about his or her disability if it is made clear that the information will only be used to monitor the effectiveness of the agency's affirmative action programs. It must be clear that the information is requested on a voluntary basis and that information obtained will be kept confidential. However, such information can be provided to managers and other personnel, where appropriate, to inform them that the individual is eligible for affirmative action. The information may also be provided to government officials investigating agency compliance with equal employment opportunity laws. (29 C.F.R. § 1614.203(e).)

## 3. Complaint Procedure For Discrimination By Federal Agencies

If you believe that you have been discriminated against in employment because of a physical or mental disability by an agency of the federal government, you may file a complaint with the EEOC or you may file a lawsuit in federal court. However, you must pursue the administrative remedies available through your agency before filing a lawsuit or lodging a complaint with the EEOC. You must bring the matter to the attention of the Equal Opportunity Counselor employed by your agency, who will then attempt to resolve the matter. The matter must generally be brought to the attention of the Equal Opportunity Counselor within 45 days of the occurrence of the discriminatory act or 45 days from the

date you knew or should have known of the discriminatory act. Generally, the Counselor must resolve your complaint within 30 days. If your complaint is not resolved, the Counselor must inform you, in writing, not later than the 13th day after you contact the Counselor, of your right to file a discrimination complaint, which will include information regarding where and with whom such a complaint should be filed. After receipt of the notice, you have 15 days to file your complaint. (29 C.F.R. § 1614.105.) If the matter is still not resolved to your satisfaction, you may then appeal to the EEOC. (29 C.F.R. § 1614.401.) You also have the option to file a lawsuit, which may be filed within 90 days of your agency's final action or 180 days after the filing of the complaint, if there has been no decision. (29 C.F.R. § 1614.408.) A lawsuit may also be filed if you are not satisfied with a decision of the EEOC.

If a violation of the law is found, you may be awarded the employment which was denied, back pay, retroactive promotion and/or preferential consideration for promotion. Unwarranted disciplinary action may also be removed from your personnel file. (29 C.F.R. § 1613 et seq.; *Prewitt v. U.S. Postal Service* (5th Cir. 1981) 662 F.2d 292.)

#### D. Federal Contractors

All government contractors and subcontractors with contracts of \$10,000 or more must take affirmative action in hiring and promoting otherwise qualified disabled individuals.<sup>4/</sup> The Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor has developed regulations for complying with this law, located in Section 503 of the Rehabilitation Act. (29 U.S.C. § 793; 41 C.F.R. § 60-741 et seq.)

##### 1. Federal Contractor Responsibilities

Businesses covered under this law must comply with the following affirmative action requirements:

- (1) Each contract must contain an affirmative action clause, as well as a statement of nondiscrimination covering all aspects of the application and employment process. (41 C.F.R. § 60-741.5.)
- (2) Businesses must take affirmative action to employ and promote disabled persons. Those contractors with 50 or more employees and a contract over \$50,000 also must develop an affirmative action plan. The plan must include outreach, recruitment, and education about the program, both within and outside of the business. (41 C.F.R. §§ 60-741.5, 60-741.40, and 60-741.44(f).)
- (3) Contractors must review their personnel policies to see if they tend to exclude qualified disabled persons, defined as those who are capable of performing a

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4. But see *Adarand Constructors, Inc. v. Peña* (1995) 515 U.S. 200, *supra*, footnote 1, declaring that all racial classifications in the awarding of contracts are subject to strict scrutiny.

particular job with reasonable accommodation. (41 C.F.R. § 60-741.44(a) and (d).)

- (4) Contractors must show whether hiring requirements which tend to screen out qualified disabled persons are job-related and necessary for the safe performance of the job. (41 C.F.R. § 60-741.44(c).)

Contractors may conduct a medical exam prior to employment, provided that the exam results are not used to discriminate unlawfully. The results of such exams must be kept confidential, except that supervisors and managers may be informed of work restrictions based on the disability. First aid and safety personnel may be informed if the condition might require emergency treatment, and government officials investigating the contractor's compliance with the Rehabilitation Act may be informed. (41 C.F.R. § 60-741.23.)

Contractors must make reasonable accommodations for a disabled applicant or employee, unless accommodation would impose an undue hardship on the contractor's business. (41 C.F.R. § 60-741.44(d).)

## 2. Complaint Procedure For Discrimination By Federal Contractors

If you believe that you have been discriminated against by a government contractor, you may file a formal complaint with the U.S. Department of Labor. The complaint must be filed with the Director of the OFCCP within 300 days of the occurrence of the alleged violation. This time limit may be extended for good cause. (41 C.F.R. § 60-741.61(b).)

The complaint can be processed at a regional office. Phone numbers for OFCCP offices in California are listed in the Directory of Services. If the Director finds a violation of the law, the agency can withhold payments to the contractor, terminate the contract or bar the contractor from receiving future government contracts. There is a split in case law on whether individuals can file a lawsuit directly in court, but you may also have a concurrent claim under the Americans With Disabilities Act of 1990 (ADA) discussed *infra*. (41 C.F.R. § 60-741.66; see 29 C.F.R. § 1641.5 (e)(1).)

## E. Recipients of Federal Funds

The Rehabilitation Act is also designed to eliminate discrimination on the basis of disability in programs or activities which receive federal financial assistance. Courts once limited coverage to the specific programs or activities which receive federal money. For example, if financial aid were the only federal money a college receives, only the financial aid program would have been prohibited from discrimination. However, legislation enacted in 1988 broadened the scope of coverage. (29 U.S.C. § 794.)

### 1. Who Is Protected?

No "otherwise qualified" individual with a disability can, solely by reason of his or her disability, be: 1) excluded from participation in, 2) be denied the benefits of, or 3) be subjected to discrimination under any program or activity receiving federal money or

administered by a federal agency. An "otherwise qualified" disabled person is one who meets a program's requirements in spite of his or her disability. However, a program may have to justify its requirements by showing that they are valid and necessary. (29 U.S.C. § 794.)

## 2. Responsibilities of Employers Who Receive Federal Funds

Recipients of federal financial assistance may not discriminate on the basis of disability in any area of employment, including recruitment, hiring, promotion, rate of pay, job assignment, or any terms, conditions or privileges of employment. Employers must make reasonable accommodations for employees' and job applicants' disabilities.

An employer may not conduct a pre-employment medical exam unless it is required of all applicants and the results are not used to discriminate. Except as described below, the employer may not ask whether an applicant is disabled or inquire about the nature and severity of the disability. The employer may ask whether an individual is able to perform job-related functions.

The employer may ask about disabilities not related to job performance only for affirmative action or other legitimate purposes. There must be a clear statement explaining that providing the information is voluntary, that the information will be kept confidential, and that there is no penalty for withholding information. The employer may give such information to supervisors and managers, first aid and safety personnel, and government officials investigating compliance with the Act.

A recipient of federal funds may not use criteria which tend to screen out disabled individuals, unless the criteria are job-related and alternative criteria or testing methods are unavailable.

## 3. Complaint Procedures for Discrimination By Recipients of Federal Funds

Each federal department and agency empowered to give financial assistance is authorized to issue compliance regulations. If a funding recipient violates the law, the agency which provided the funds may enforce compliance by terminating federal funding to the program or activity affected or by any other legally authorized means.

If you believe that you have experienced discrimination, you generally must file a written complaint within 180 days from the date of the alleged discrimination with the agency that provides funds for the particular employer.

If the agency finds that the recipient did not violate the provisions of the Act, then you may appeal to federal court. In most cases, you can also go directly to federal court and bypass the entire administrative process.

Violators can be ordered to stop discriminatory practices or to hire a disabled individual against whom they discriminated. In addition, back pay and reimbursement of some costs

may be available. (29 U.S.C. § 794; 28 C.F.R. § 41 et seq.; *Consolidated Rail Corp. v. Darrone* (1984) 465 U.S. 624; *Southeastern Community College v. Davis* (1979) 442 U.S. 397.)

## THE AMERICANS WITH DISABILITIES ACT OF 1990

The ADA is generally regarded as the most significant federal legislation yet enacted in the area of disability rights. The employment provisions of the ADA have the effect of extending the protections of the Rehabilitation Act of 1973 to the employees of private employers and governmental entities other than the federal government.

Title I of the ADA (42 U.S.C. § 12111 et seq.) prohibits discrimination on the basis of disability by private employers and other "covered entities" -- local and state governments, labor organizations, etc. -- with respect to hiring and all terms and conditions of employment. Provisions of the ADA apply only to employers who employ 15 or more employees. (42 U.S.C. § 12111 (5)(A).)

### A. What is Prohibited?

The "discrimination" prohibited by the ADA includes segregating, limiting or classifying any job applicant or employee because of a disability in a manner adversely affecting the individual's status or opportunities. (42 U.S.C. § 12112 subd. (a) & (b).) Such discrimination can include failing to make a reasonable accommodation for an individual's physical or mental impairments, or using employment tests and standards that tend to screen out disabled persons, unless such tests or standards are shown to be job-related or consistent with business necessity. (42 U.S.C. § 12113 et seq..)

### B. Who Is Protected?

The kind of "disability" covered by the ADA is defined as a physical or mental impairment that substantially limits one or more of the major life activities, a record of such impairment, or being regarded as having such an impairment. (42 U.S.C. § 12102 subd. (2).)

#### 1. "Physical or Mental Impairment"

This term has been broadly defined by statute to cover virtually all physical disorders or injuries, and also includes most mental or psychological disorders, such as mental retardation, emotional or mental disorders, and special learning disabilities.

#### 2. "Qualified Individual With a Disability"

For purposes of the ADA's employment protections, a qualified person with a disability is defined as a disabled individual who, with or without reasonable accommodation, can perform the essential functions of the employment position in question. (42 U.S.C. § 12111 (8).)



C. Who Is Excluded?

1. Drug Users

For purposes of the ADA's employment protections, employees or applicants currently engaged in the illegal use of drugs are specifically excluded. (42 U.S.C. § 12114.) The term "drug" is defined for purposes of the Act as a controlled substance within the meaning of the federal Controlled Substances Act. (42 U.S.C. § 12111 (6); 21 U.S.C. § 801 et seq..)

2. Rehabilitation

Although illegal drug users are excluded from ADA protection, the Act does appear to protect qualified disabled individuals who have been successfully rehabilitated and no longer engage in illegal drug use. (42 U.S.C. § 12114.)

3. Drug Tests

Employers may require job applicants to be tested for drug use. Such tests, however, must comply with all local, state and federal laws, regulations, and constitutional provisions regarding quality control and confidentiality. No standards are set forth in the ADA as to how the accuracy and reliability of drug tests are to be determined. However, although an individual who tests positive for illegal drug use may not rely on the ADA's protection, he or she may still be protected by that part of the ADA that covers individuals erroneously regarded as engaging in illegal drug use. (42 U.S.C. § 12114 (b)(3).)

D. Reasonable Accommodation Requirements

The ADA prohibits covered employers from failing to provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual, unless the employers can demonstrate that such accommodation would impose an undue hardship. (42 U.S.C. § 12112 (b)(5)(A)&(B).) Reasonable accommodation is not required, however, unless the physical or mental limitations are known to the employer and/or the accommodation has been requested. (42 U.S.C. § 12112(5)(A).)

1. "Reasonable Accommodation"

The determination of what constitutes a "reasonable accommodation" required by the ADA will depend on individual circumstances, and might include modified work schedules, job restructuring, changes to work areas or equipment, and similar adjustments. (42 U.S.C. § 12111 (9)(A)&(B).)

2. "Undue Hardship"

An employer may be excused from the obligation to make an accommodation where it can be demonstrated that undue hardship would result to the employer's business. Where

undue hardship will result, the accommodation is not reasonable and will not be required. "Undue hardship" is defined as any action requiring significant difficulty or expense, taking into account a number of factors, including cost, complexity and impact on the work performed. (42 U.S.C. § 12111 (10).)

E. Employment Tests And Working Conditions

1. Medical Examinations and Inquiries

a. Pre-employment

Under the ADA, a covered employer may not conduct pre-employment medical or psychological examinations. The employer may not make pre-employment inquiries regarding the existence, nature or severity of an applicant's disabilities. However, the employer may make inquiries about an applicant's ability to perform job-related duties. (42 U.S.C § 12112 (d)(2).)

b. After an offer of employment has been extended

Once an employer has made an offer of employment, the employer may require a medical examination or inquiry. However, such exams or inquiries may only be required if required of all new employees, regardless of disability. Medical exams or inquiries which use criteria to screen out employees with disabilities may only use such criteria if it can be shown that the exclusionary criteria are job-related and consistent with business necessity. Any information resulting from such examinations or inquiries must be maintained in a separate confidential file, but may be shared with supervisors and managers for safety or other significant job performance reasons. (42 U.S.C. § 12112 (d)(3).)

c. Employees

The same rules apply to individuals who have become employees. Employers may not require medical exams or make inquiries of an employee regarding the nature or severity of a disability unless it is shown to be job-related and consistent with business necessity. (42 U.S.C. § 12112 (d)(4).)

2. Employment Tests

Employment tests that tend to screen out individuals with disabilities are prohibited by the ADA, unless shown to be job-related for the position in question and justified by business necessity. The Act requires that employment tests be administered in a manner that ensures a fair reflection of the skills and aptitudes actually needed to perform the job. (42 U.S.C. § 12112 (b)(6)&(7).)

3. Drug Tests

As already noted, pre-employment drug tests are not prohibited by the ADA, and can be administered to applicants if done in a manner that complies with adequate quality control and confidentiality standards. (42 U.S.C. § 12114.)

#### 4. Employee Privacy

Employers covered by the ADA may not make inquiries regarding the existence, nature or severity of an employee's disability, unless the inquiry is shown to be job-related and consistent with business necessity. Similarly, medical examinations of employees are not permitted unless the examination is shown to be job-related and consistent with business necessity. (29 U.S.C. §§ 1630.13 and 1630.14.)

### F. Enforcement

#### 1. EEOC

The ADA gives the federal EEOC the primary authority to enforce its prohibitions against discrimination in employment based upon disability or perceived disability. Thus, the powers of the EEOC to enforce the ADA are similar to those used to enforce Title VII of the 1964 Civil Rights Act prohibiting employment discrimination because of race, sex, age or nationality. (42 U.S.C. § 12117 (a); 42 U.S.C. § 2000e et seq..) This means that an individual who believes that he or she has been the victim of employment discrimination because of disability can file a complaint with the EEOC for investigation and further legal action, if warranted. However, an individual must first file with any existing state agencies dealing with employment discrimination in an attempt to resolve the dispute. The individual may file with the EEOC 60 days after he or she has filed with the state agency. Once all EEOC remedies have been exhausted, private legal actions to enforce the terms and protections of the ADA are also authorized. (42 U.S.C. § 12117.)

#### 2. Relief

The relief provisions of the ADA are intended to make those who have suffered discrimination in employment due to disability "whole," and to prevent future acts of discrimination by the employer. Relief can include hiring, reinstatement, promotion, and back pay. The award of reasonable attorney's fees and costs is also authorized. (42 U.S.C. §§ 12117 and 12205.) Alternate means of dispute resolution, such as mediation, arbitration and other non-judicial procedures are encouraged by the ADA, but are not required. (42 U.S.C. § 12212.)

#### 3. Retaliation

The ADA prohibits discrimination or retaliation against anyone who has opposed acts or practices unlawful under the Act, has asserted a claim under the ADA, or has assisted in the assertion of such a claim by acting as a witness or aiding in the investigation of ADA violations. (42 U.S.C. § 12203.)

## CHAPTER 2

## HOUSING

### I. HOUSING DISCRIMINATION

#### STATE LAW

Disabled individuals have the right under state law to rent, lease, or buy housing accommodations free from discrimination due to a disability. An individual is considered disabled if he or she has one of the following:

- (1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual;
- (2) a record of having or being perceived as having such impairment.

(Cal. Civ. Code, §§ 51 and 54 (b); Gov. Code, §§ 12955 and 12955.3.)

A person renting, leasing or providing real property for compensation must use the same criteria for selection of disabled and non-disabled individuals. An "owner" includes anyone who rents or sells housing, including another renter with a lease, a real estate agent or broker, a salesperson, or a state or local government agency.<sup>5/</sup> (Cal. Civ. Code, § 54.1.) The FEHA also prohibits disability discrimination by financial institutions and persons making, printing or publishing advertisements. (Gov. Code, § 12955.)

It is illegal to refuse to sell, rent, or lease housing to an individual because the person is disabled, or to assert that housing is not available when it actually is available. All housing accommodations are covered under state law, except those in which only one room is rented in a single family residence. (Cal. Civ. Code, § 54.1; Gov. Code, § 12927 (c)(2)(A).)

Equal access to housing for disabled individuals includes the right of a blind or visually disabled person to keep a guide dog, a deaf person to keep a signal dog, or any other disabled person to keep a service dog, even if pets are not ordinarily allowed in the residence. (Cal. Civ. Code, § 54.1 (b)(6)(A).) However, a landlord who does not rent to tenants with dogs does not have to rent to a disabled tenant whose dog is not a guide dog, signal dog or service dog. By January 1, 1997, Civil Code section 54.1 (b)(6)(B) and 54.2 will confirm that tenants can be held liable for damages to real and personal property caused by guide dogs, signal dogs or service dogs. Any person who rents, leases or otherwise provides real property to disabled persons may not deny them the right to make reasonable modifications at their expense to accommodate their disabilities if they agree to restore the premises to their pre-existing conditions. (Cal. Civ. Code, § 54.1 (b).) An owner may not discriminate against a disabled individual who is dependent on a spouse's

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5. The FEHA excludes from its definition of disability current illegal use or addiction to a controlled substance; 42 U.S.C. §§ 3605 and 3606.

income if the spouse is included on the rental agreement or lease, but together a couple must meet the owner's credit and financial requirements. (Cal. Civ. Code, § 54.1 (b)(7).) A person discriminated against on the grounds of disability pursuant to Civil Code section 54.1 can ask the local district attorney, city attorney, the Department of Rehabilitation acting through the Attorney General or the Attorney General to bring an action to enjoin the violation, or to seek other remedies available under the ADA, or he or she may bring a legal action to enjoin the violation and recover reasonable attorney's fees if he or she prevails.

A person can file a complaint with DFEH for a violation of the FEHA within one year from the date upon which the discrimination occurred<sup>6/</sup> or can file a suit on his or her own behalf after obtaining a right to sue letter. Actual damages and penalties of up to \$50,000 can be awarded by the FEHC, along with injunctive relief. A court can award actual and punitive damages, injunctive relief and attorney's fees. (Gov. Code, §§ 12987 and 12989.2.)

### FEDERAL LAW

The federal Fair Housing Act of 1968 (42 U.S.C. § 3601, et seq.) requires a landlord to permit apartments to be made accessible to disabled persons<sup>7/</sup> at the expense of the disabled renter if the renter agrees to pay reasonable costs of restoring the premises to its original condition after the renter leaves and if such modification is necessary to afford the renter full enjoyment of the premises. However, an owner may not require the disabled renter to pay for reasonable wear and tear of the premises. Renting for purposes of this Act includes leasing, subleasing or otherwise granting for consideration the right to occupy premises not owned by the occupant. (42 U.S.C. § 3602(e).) There is an exemption in the Act for certain single-family houses and certain rooms or units in fourplexes. (42 U.S.C. § 3603.) Furthermore, the Act requires that all new rental housing, ready for occupancy 30 months after September 13, 1988, be designed and constructed so as to be accessible to disabled individuals, as defined in 42 U.S.C. § 3604(f)(3)(C). New rental housing covered by this section of the Act includes only buildings consisting of four or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of four or more units. (42 U.S.C. § 3604 (f)(7)(A) and (B).)

If you believe that you have experienced discrimination in housing, you may either file a lawsuit or you may file a complaint with HUD, not later than one year after the discriminatory act has occurred or terminated and HUD may pursue legal remedies on your behalf. (42 U.S.C. §§ 3610 and 3612.)

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6. This period may be extended for not to exceed 90 days if the person first obtained knowledge of the facts of the alleged unlawful practice after the expiration of the one year period.

7. The definition of disability is similar to that found in the FEHA; see 42 U.S.C. § 3602 (h)).

## II. HOUSING PROGRAMS

Both the federal government and the State of California recognize that there is a shortage of suitable housing and have set national and state goals to provide decent housing for all. Funds are provided to nonprofit agencies to build low income housing. Eligible disabled individuals and their families may apply for housing constructed through these projects. The federal and state housing programs are discussed below.

### Federal Housing Programs

Under federal law, a "disabled household" is defined as one or more persons, at least one of whom is an adult (18 years of age) who has a disability, or the surviving member or members of any such household who were living with the deceased member at the time of his death. A "person with a disability" is a person who has a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently and is of a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if such person has a developmental disability. (42 U.S.C. §§ 8013 (k)(2) and 6001(8); 24 C.F.R. § 891.305.) Note that federally financed residences must also meet access requirements. (24 C.F.R. §891.500 et seq.) Families which qualify may receive rent supplement payments. (24 C.F.R. § 891.610.) Income levels for determining eligibility are set by HUD. (24 C.F.R. § 891.750.) Contact HUD to determine if you may qualify.

### California Housing Programs

California has implemented several housing programs to further the goals of its housing policy. Individuals and families that qualify are eligible to rent or buy housing financed by state or federal funds. Under California law, a "handicapped family" is defined as one in which an individual or the head of a household is suffering from an orthopedic disability which impairs his or her mobility or a physical disability which affects his or her ability to obtain employment. Also included are individuals or heads of families with developmental disabilities or mental disorders. To be eligible, a disabled individual must also require special facilities or care in the home. (Cal. Health and Saf. Code, § 50072.) Shared housing arrangements in which at least one person is disabled or elderly are supported by housing payment assistance. (Cal. Health and Saf. Code, § 19902 et seq..)

- Elderly or handicapped individuals must be allocated not less than 20 percent nor more than 30 percent of the units constructed under the Rental Housing Construction Program. (Cal. Health and Saf. Code, § 50736 (a).)
- As a part of the de-institutionalization process for disabled individuals, the state will provide housing assistance payments during the transition period from an institution to an independent setting. Physically or developmentally disabled and mentally disordered individuals are qualified for assistance if they are eligible for rehabilitation, educational, or social

services from a public agency. (Cal. Health and Saf. Code § 50680 et seq.)

Funds for housing programs are provided by federal, state, and local agencies. These agencies will take into account your current income in determining your eligibility for these programs. These financing programs have been designed to meet the needs of low and moderate income individuals and families. Contact HUD, the California Department of Housing and Community Development, the California Housing and Infrastructure Finance Agency and your local housing authority for information about housing programs in your area. See the Directory of Services for the locations of regional offices.

### CHAPTER 3

#### NONDISCRIMINATION IN BUSINESSES AND SERVICES

##### I. NONDISCRIMINATION IN PUBLIC ACCOMMODATIONS, TRANSPORTATION CARRIERS AND BUSINESS ESTABLISHMENTS

###### A. California Access Law

Under California law, persons who are disabled are entitled to full and equal access to places of accommodation, transportation carriers, lodging places, recreation and amusement facilities, and other business establishments where the general public is invited<sup>8/</sup>. This rule applies to medical facilities, including hospitals, clinics and physicians' offices. Persons with both physical and mental disabilities are protected. (Cal. Civ. Code, § 54.1.) A disabled person or a trainer of guide, signal or service dogs has the right to be accompanied by a guide dog, signal dog, or service dog without being required to pay an extra charge or to leave a security deposit, although if with a trainer, the dog must be on a leash and tagged as a guide, signal or service dog. (Cal. Civ. Code, § 54.1 (c) and 54.2;

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8. The California Supreme Court recently held that a private club under certain circumstances is a business establishment. (*Warfield v. Peninsula Golf & Country Club* (1995) 10 Cal.4th 594.) The Court recently decided that the Boy Scout organization was not a business establishment. (*Randall v. Orange County Council, Boy Scouts of America, et al.* (1998) 17 Cal.4th 736.)

Cal. Agr. Code, §§ 30850<sup>9/</sup> and 30852.) As of January 1, 1997, Civil Code sections 54.1 (c) and 54.2 (a) and (b) and Penal Code section 365.5 shall confirm that such persons can be liable for any provable damage done to the premises or facility by the dog. Under this nondiscrimination law, an establishment is not required to make structural modifications in order to facilitate access by physically disabled persons. (Cal. Civ. Code, § 54.1 (a)(4); *Marsh v. Edwards Theatres Circuit, Inc.* (1976) 64 Cal.App.3d 881.)<sup>10/</sup> However, other laws which mandate structural modification may apply to these establishments. (See Chapter 4 for an in- depth discussion of access under the ADA.)

Civil Code, § 54.7 authorizes zoos and wild animal parks to prohibit guide, signal or service dogs from accompanying persons with disabilities in areas where patrons of the park are not separated from zoo or park animals by physical barriers. However, any mode of transportation provided to the general public must be offered free to visually- impaired persons who would otherwise use a guide dog or wheelchair-users who would otherwise use a service dog.

If you believe that your right of admittance to or enjoyment of one of these facilities has been violated, you may file a lawsuit to recover actual damages and an amount up to three times actual damages, but no less than \$750<sup>11/</sup> and attorney's fees. (Cal. Civ. Code, § 54.3) A court may also order the facility to stop its discriminatory practices. In addition a violation of the ADA is also considered to be a violation of the Unruh Civil Rights Act. (Cal. Civ. Code, §§ 51.) Civil Code section 54.1 incorporates ADA regulations with regard to transportation. The Attorney General, a city attorney, a district attorney, or the Department of Rehabilitation acting through the Attorney General may also file suit and may make use of ADA remedies when appropriate. (Cal. Civ. Code, § 55.1.) As of January 1, 1997 DFEH will also have jurisdiction to handle a complaint for violation of Civil Code sections 54.1 and 54.2. (See Gov. Code, § 12948.)

It is a misdemeanor punishable by a fine not exceeding \$2500 to interfere with a disabled person's right to be accompanied by a guide dog, signal dog or service dog in public conveyances or accommodations. (Cal. Pen. Code, § 365.5.) It is a misdemeanor punishable by a jail sentence of up to six months or a fine of not less than \$1500 nor more than \$2500 or both to intentionally interfere with the use of a guide dog by harassment or obstruction. (Cal. Pen. Code, § 365.6.) It is also a misdemeanor punishable by a jail sentence of up to six months or a fine of up to \$1,500 to knowingly or fraudulently represent yourself to be the owner or trainer of a guide, signal or service dog. (Cal. Pen. Code, § 365.7) Penal Code § 600.2 makes it an infraction for any person to permit a dog

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9. According to California Agricultural Code § 30850 (c), identification tags for assistance dogs shall be returned to the issuing entity upon the dog's death.

10. As of January 1, 1997 Civil Code § 54.1 will provide that a violation of the ADA will be a violation of this section; Civil Code section 55.1 provides that ADA remedies, which include structural modifications, can be sought for violation of section 54.1.

11. As of January 1, 1997 this amount will be changed to \$1,000.



owned, harbored or controlled by him or her to cause injury or death to any guide, signal or service dog performing its duties. Any person intentionally causing the death of a guide, signal or service dog performing its duties shall be punishable by up to one year in jail or a fine up to \$5000 or both. (Cal. Pen. Code, § 600.5.) Any person convicted of violating Penal Code sections 600.2 or 600.5 shall be ordered to make restitution for veterinary bills or replacement dogs, if appropriate.

#### B. Discrimination Based on Disability

Persons with disabilities are protected from discrimination in any business establishment open to the public. The Unruh Civil Rights Act (Cal. Civ. Code, § 51) forbids all arbitrary discrimination by business establishments on the basis of disability. "Business establishment" has been broadly defined by the courts and generally includes housing, hotels and motels, theaters, shopping centers, restaurants, and all forms of transportation. Under this nondiscrimination law, an establishment is not required to make structural modifications in order to facilitate access by physically disabled persons.

A victim of discrimination has several legal remedies under the Unruh Act. You may file a complaint with the DFEH, which must investigate and prosecute violations of the Unruh Act. You may also file a lawsuit to recover actual damages and treble damages of no less than \$1000 and attorney's fees. (Cal. Civ. Code, § 52.) Finally, if you believe that a person or group of persons is engaged in a conduct of resistance to any of the rights guaranteed by the Unruh Act, and that conduct is intended to deny the full exercise of those rights you should contact the Attorney General, city attorney, or district attorney, who may then file suit in your behalf. (Cal. Civ. Code, § 51 et seq.)<sup>12/</sup> Pursuant to this section, a violation of the ADA is also considered to be a violation of the Unruh Act.

#### II. NONDISCRIMINATION IN STATE-SPONSORED PROGRAMS AND ACTIVITIES AND IN PUBLIC PLACES

No person may be denied the benefits of, or be unlawfully subjected to, discrimination under any program or activity either funded directly or assisted financially by the state. (Cal. Gov. Code § 11135.) You may not file a private lawsuit against the state under that statute, but you may file a complaint with the appropriate funding agency. (*Arriaga v. Loma Linda University* (1992) 10 Cal.App.4th 1556, *review den.* (Feb. 11, 1993.)) See also Civil Code section 54, which provides that individuals with disabilities shall have the same right as the general public to the full and free use of streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics and physician's offices, public facilities and other public places. As of January 1, 1997, a violation of the ADA will also be a violation of this section, and the DFEH will have jurisdiction to handle

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12. Additionally, disabled persons are protected under the anti-hate crime statutes, which provide for sentence enhancements for persons wilfully threatening persons in the exercise of state or federal constitutional or statutory rights or damaging their property, or the property of a public or private institution because of their disability or perceived disability or association with persons with disabilities. (Cal. Pen. Code, §§ 422.6, 422.7 and 422.75.)

a complaint for violation of this section. Civil Code section 55.1 allows for the pursuit of ADA remedies for a violation of section 54 or you are entitled to the remedies provided by Civil Code section 54.3.

### III. NONDISCRIMINATION IN INSURANCE COVERAGE

#### A. Life, Annuity, or Disability Insurance

It is illegal to discriminate against disabled persons in life, annuity or disability insurance. Specifically, insurers providing individual or group life, annuity, or disability insurance cannot refuse to insure, or limit the amount or kind of coverage available, or charge a different rate for the same coverage solely because a person is blind, partially blind, or has a physical or mental impairment. A physical or mental impairment is defined as any physical, sensory, or mental impairment which substantially limits one or more of a person's major life activities. An insurer may refuse to insure, limit coverage, or charge different rates only if based on sound actuarial principles or actual and reasonably anticipated experience. (Cal. Ins. Code, §§ 10144, 10145.)

Every policy of disability insurance which covers hospital, medical, or surgical expenses on a group basis must offer coverage to physically disabled members of the group under the same terms and conditions as are offered to other group members. The group policies are not required to cover hospital, medical, or surgical expenses which arise as a direct result of an individual's physical disability. (Cal. Ins. Code, § 10122.1.)

Life and disability income insurers are prohibited from making unfair distinctions between individuals when insuring for the risk of AIDS or AIDS-related conditions (ARC). There are mandatory and uniform standards for HIV testing and for determining insurability. Strict confidentiality is required of personal information obtained through testing. (Cal. Ins. Code, § 799 et seq..)

#### B. Health Insurance

No insurance plan or nonprofit hospital service corporation providing individual or group health care service can limit the extent or kind of coverage available, refuse to cover, or charge a different rate solely because of an individual's physical or mental impairment. A plan can only refuse to insure, limit coverage, or charge different rates if based on sound actuarial principles or underwriting practices. (Cal. Health & Saf. Code, § 1367.8; Cal. Ins. Code, § 11512.19.)

A group health plan cannot discriminate against disabled individuals or groups with disabled members, although it may reasonably exclude coverage for services related to the disabling condition. (Cal. Health & Saf. Code, § 1373 subd. (f).) Life and disability income insurers are prohibited from requiring an HIV antibody test if the results would be used to determine eligibility for hospital, medical or surgical insurance coverage or for coverage under a hospital service plan or health care service plan.

An insurer may not delay more than 60 days in the payment or provision of hospital, medical or surgical benefits for AIDS or AIDS-related complex for the purpose of

investigating whether the condition arose prior to commencement of coverage. However, this 60 day period does not include any time during which the insurer awaits medical information from a health care provider. (Cal. Ins. Code, § 790.03 (h)(16).)

C. Automobile Insurance

Automobile insurers cannot discriminate against disabled people. Insurers cannot refuse to issue automobile insurance or charge higher rates solely because of a person's disability. A "handicapped person" is defined for purposes of this law as an individual who has suffered an impairment of physical ability, hearing, or speech which has been compensated for, when necessary, by vehicle equipment adaptation or modification. The insurer may require a disabled person to furnish proof that he or she has qualified for a new or renewed driver's license since the occurrence of the disabling condition. (Cal. Ins. Code, § 11628.5.) An insurer or agent who discriminates in providing auto insurance may have to pay \$100.00 per violation and must reimburse the insured for any excess premium paid. Attorney's fees may also be recovered if there is a lawsuit. (Cal. Ins. Code, §§ 11629 and 11629.5.)

No insurer may refuse to insure the owner of a motor vehicle solely because the owner is blind. However, an insurer may exclude from coverage under the policy injuries and damages incurred while the insured vehicle is operated by an unlicensed owner who is blind. An insurer cannot raise the premiums or cancel the policy of an insured blind person solely because the operators of the insured vehicle are changed frequently. (Cal. Ins. Code, § 11628.7.)

D. Proposition 103

Voters in November, 1988 passed Proposition 103, an insurance initiative requiring companies to reduce rates for auto, fire, and liability insurance. Included within the many clauses of this legislation are provisions which affect the rights of physically disabled people.

An insurer may cancel or fail to renew an automobile insurance policy only if a premium is not paid, there is a substantial increase in the hazard insured against, or there is fraud. The criteria by which an insurer must determine automobile insurance premiums are: the insured's driving safety record, the number of miles he or she drives annually, and the number of years of driving experience he or she has had. Good Driver Discount policies may be purchased by anyone whose driving record permits, regardless of disability. (Cal. Ins. Code, §§ 1861.02 and 1861.03.)

In addition to these provisions, Proposition 103 subjected the insurance industry to the Unruh Civil Rights Act. The insurance industry, whether life, health, or automobile, must provide full and equal services, regardless of blindness or other physical disability. (Cal. Ins. Code, § 1861.03; Cal. Civ. Code, §§ 51, 53.)

E. Insurance Appeal Procedures

If you believe that you have been discriminated against in health, disability or auto insurance, you may file a written complaint with the California Insurance Commissioner requesting that the Commissioner review the manner in which a rate, plan, system or rule has been applied by an insurer. In addition, you may file a written request for a public hearing before the Commissioner. If you do not agree with the decision of the Commissioner, then you may appeal the decision in a court of law. (Cal. Ins. Code, § 1858 et seq..)

The Unruh Act also provides legal remedies for those who have been discriminated against by the insurance industry. (Cal. Civ. Code, § 51; Cal. Ins. Code, § 1861.03.) Courts have ruled that the Fair Employment and Housing Commission has no jurisdiction to decide Unruh Act claims involving the insurance industry. (*Wilson v. Fair Employment & Housing Com.* (1996) 46 Cal.App.4th 1213 (review den. Oct. 1996.)

#### IV. NONDISCRIMINATION IN LICENSED SERVICES

The Department of Consumer Affairs licenses many professions and services. Architects, nurses, physicians, auto repair persons, beauticians, and funeral directors are all licensed professionals. People who hold licenses issued by the state are subject to disciplinary action if they discriminate against disabled people. The holder of the license is not required to permit an individual to participate in, or benefit from, the licensed activity where the individual poses a direct threat to the health or safety of others. A "direct threat" is defined as a significant risk to health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

Complaints of discrimination can be made to the board or commission within the Department of Consumer Affairs, which is charged with the regulation of the particular profession. (Cal. Bus. & Prof. Code, § 125.6.)

## CHAPTER 4

### ACCESS

#### INTRODUCTION

Access is a critical issue for disabled people. Lack of access to buildings and other facilities is an obstacle in obtaining employment, education, housing, entertainment, health care and other services. Lack of access to transportation services hinders the ability of disabled people to live independent lives. Lack of access to telecommunications services limits the ability of disabled people to obtain information and has often posed a threat to safety.

California's public policy is to promote the right to full and equal access to public places, public transportation, telephone facilities, lodging and entertainment. In addition, California and the federal government have passed a number of laws intended to increase

access to facilities, transportation and telecommunications. The most important of these is the ADA, which prohibits discrimination in many areas of life and mandates changes in both government and private services and facilities in order to provide access to people with disabilities. The ADA takes the place of many state laws which do not provide as much protection as the ADA itself, setting minimum access requirements nationwide.

California also has a strong set of laws designed to provide access to individuals with disabilities. California laws which do not conflict with the ADA are still in effect, at times providing greater protection than the ADA itself, and providing disabled individuals with more legal avenues to ensure access.

## I. ACCESS TO BUILDINGS AND FACILITIES

Both California and federal laws address the goal of increasing physical access and removing architectural barriers. In 1968 California passed broad civil rights and access laws which affect a large number of buildings and facilities (Cal. Civ. Code, §§ 54, 54.1 and Gov. Code, § 4450.) The same year, Congress passed the Architectural Barriers Act (ABA), which marked the beginning of a new federal policy toward disabled people. The ADA further expands the right to accessible buildings and accommodations. Although there are an ever-increasing number of accessible buildings, there are some major exceptions to the accessibility laws (such as most privately-funded residences). A number of cities have passed access ordinances which supplement the state and federal statutes. Those are not included in this handbook, but may be obtained from your local library or city hall.

The major access laws are all enforced in a similar manner. First, most access laws include specific standards which groups covered under the law must follow when constructing or altering buildings. These laws do not require major changes in older buildings, but reasonable modifications may be required to create access. When a new building is planned, or an existing one is remodeled, it must meet legal accessibility standards. Second, if a proposed building is covered under the law but does not meet accessibility standards, the courts or government agencies can force the builders to comply. An individual who feels discriminated against because of lack of access to a building or facility may file a lawsuit in federal or state court.

### A. Discrimination By Government

#### 1. The Federal Government

The ABA does not apply to the federal government. However, the ABA is based in part on earlier laws passed to ensure that individuals with disabilities were not excluded from access to federal buildings and facilities or discriminated against in services or programs. The ABA was passed to ensure that disabled people would have access to buildings and structures designed, altered, or built with federal funds after August 12, 1968. Coverage extends to any portion of a building or facility, including access routes, doors, common use areas, telephones, curb ramps, drinking fountains, seating, and restroom facilities. Roads, walks, parking lots, parks, and other outdoor areas are also included. Public housing is also included, although most residences are not. (42 U.S.C. §§ 4151 et seq..)

The Act is enforced by the Architectural and Transportation Barrier Compliance Board (ATBCB), which has developed guidelines for accessible design. The Board consists of thirteen members of the public, of which a majority must be individuals with disabilities, and eleven government members. The Board's functions include:

- ensuring compliance with the ABA;
- reviewing waivers and modifications of standards to make sure that they are consistent with the ABA;
- developing advisory guidelines and providing technical assistance to individuals with disabilities or individuals and entities who have duties under the ABA or the ADA;
- establishing minimum standards required under the ABA or the ADA;
- promoting accessibility in all segments of society;
- ensuring that public conveyances are readily accessible;
- holding public hearings;
- finding alternative approaches to architectural, transportation, communication, and attitudinal barriers confronting disabled individuals;
- determining how federal, state, and local governments and other public and nonprofit agencies are eliminating access barriers;
- promoting the use of the International Accessibility Symbols;
- making reports on the results of investigations to the President and to Congress.

You may complain to the ATBCB about noncompliance with the ABA. (See Directory of Services.) The Board will investigate the complaint and if a violation is found, the Board can take action to correct the violation. If you are not satisfied with the Board's action, you may seek review of the case in court. (29 U.S.C. § 792.)

All public works projects receiving federal grants must have proper accessibility standards incorporated into their plans. The ATBCB is authorized to ensure that any construction or renovation complies with these standards. (42 U.S.C. § 6705(g).)

## 2. State and Local Governments

The ADA provides that no qualified individual with a disability shall be excluded from participation in, or denied the benefits, services, programs, or activities of a public entity. Also, a public entity may not discriminate in any other manner against an individual due to a disability. This means that no state or local government, governmental agency, or other

instrumentality of government may discriminate upon the basis of a disability where the individual is otherwise qualified to receive a benefit or service or to participate in a program. (42 U.S.C. §§ 12131, 12132.) It is considered discrimination under the ADA for a governmental organization to fail to provide physical access for disabled individuals to its buildings and facilities, public transportation services, and other services.

State and local governments must provide access to their facilities and services. There are no exceptions to this rule. However, a state or local government does not necessarily have to make every facility accessible. If alterations would threaten the historic nature of a facility, fundamentally alter the nature of a service or program, or present an undue financial or administrative burden, then other methods of compliance may be used. A state or local government may satisfy this requirement in several ways by:

- making structural modifications;
- reassigning services to accessible sites;
- making home visits;
- using accessible rolling stock;
- using other methods that provide access.

(28 C.F.R. § 35.150 (b).)

If you feel that you are being discriminated against by a state or public entity, you may file a complaint with the United States Department of Justice. The U.S. Attorney General will either investigate the complaint or will refer your complaint to an appropriate government agency. If the complaint cannot be resolved, then the U.S. Attorney General may file a civil action to force the state or public agency to comply. You may also file your own lawsuit, and you will be entitled to attorney's fees if you prevail. (42 U.S.C. § 12133; 28 C.F.R. § 35.170 et seq..)

California also provides complaint and enforcement procedures through the Department of General Services, the California Attorney General, district attorneys, and city attorneys. (See subpart C of this section below.)

#### B. Discrimination By Private Parties

The ADA further provides that no individual shall be discriminated against on the basis of disability by any person who owns, leases or operates a place of public accommodation. A person with a disability is entitled to full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations offered at any place of public accommodation. (42 U.S.C. § 12182.) The term "public accommodation" refers to any business or establishment open to the public. For example, restaurants, movie theaters, hotels, shops, amusement parks, hospitals, and bowling alleys are all considered public accommodations.

A place of public accommodation is required to facilitate access by:

- (1) modifying policies, practices, or procedures,
- (2) providing auxiliary aids and services, and
- (3) removing architectural barriers.

The duties listed above may be avoided if a place of public accommodation can show that the performance of these duties would result in an undue burden (significant difficulty or expense), or would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations being offered. (28 C.F.R. § 36.301 et seq.)

Examples of steps which are appropriately taken to remove architectural barriers include: installing ramps and curb cuts; repositioning shelves; telephones; bathroom dispensers or furniture; adding raised markings on elevator control buttons; installing flashing alarm lights; widening doors; installing offset hinges; eliminating turnstiles or providing alternative accessible paths; installing accessible door hardware and grab bars in toilet stalls; rearranging toilet partitions to increase maneuvering space; insulating lavatory pipes under sinks to prevent burns; installing raised toilet seats and full length bathroom mirrors; creating designated accessible parking spaces; installing an accessible paper cup dispenser at an existing inaccessible water fountain; removing high pile, low density carpeting; and installing vehicle hand controls. (28 C.F.R. § 36.304.)

All new facilities must be designed so that they are readily accessible and usable by disabled people. If a private party makes alterations to a facility, then the area altered must be made accessible. Whenever a facility is altered so that an area containing a primary function is affected, the alteration must also be made in such a manner that the path to the bathrooms, telephone, and drinking fountains serving the altered area are readily accessible. However, exceptions to the rule exist where the alterations to the path of travel, telephones, bathrooms or drinking fountains would be disproportionate in cost and scope to the planned alterations. (42 U.S.C. § 12183.) A public accommodation is required to maintain in operable condition the facilities and equipment required to be readily accessible to and useable by disabled persons. (28 C.F.R. § 36.211.)

If you feel that you have been discriminated against by a place of public accommodation, then you may file a complaint with the U.S. Department of Justice. The U.S. Attorney General will investigate your complaint and may file a civil action to force the private entity to comply. You may also file a lawsuit to halt a violation on your own and will be entitled to attorney's fees if you prevail. (42 U.S.C. §§ 12188, 2000a-3(a); 28 C.F.R. § 36.501 et seq.)

You may also use the procedures available under California law by filing a complaint with the building department of your town or city, or by filing a complaint with a district attorney, city attorney, the Department of Rehabilitation, or the California Attorney General. (See subpart C below.)

### C. California Laws and Regulations



While the ADA requires that all new public accommodations and facilities built for first occupancy after January of 1993 be accessible to disabled individuals, California law actually provides some greater protections. California already requires that facilities built with private funds after July 1, 1970, which are open to the public, be accessible to disabled people. Facilities constructed before July 1, 1970 must have been made accessible when any alterations, structural repairs, or additions were made. Like the ADA, the accessibility requirement applies to the altered area and the path of travel and key facilities which serve it. (Cal. Health & Saf. Code, §§ 19956 and 19959.)

California also passed a series of laws designed to ensure that all buildings, structures, sidewalks, curbs, and related facilities constructed in California using state, county, or municipal funds and used by the public were accessible and usable by disabled people. Buildings constructed before 1968 are not required to be accessible unless structural alterations or repairs are made. If a building is altered, the changed area must be made accessible, as well as the path of travel to it and key facilities (such as restrooms) serving it. (Cal. Gov. Code, § 4450 et seq.; see also the discussion of Civil Code section 54 in section II.)

a. Public Awareness

The California Department of Rehabilitation is responsible for educating the public and working with the state government to encourage compliance with access standards. (Cal. Gov. Code, § 4455.)

b. Disabled Community Involvement

The Department of Rehabilitation may ask disabled individuals familiar with access laws to inspect the plans for new state and school district buildings to see if they meet the minimum access requirements. If an individual thinks a building is out of compliance, he or she may notify the Department of Rehabilitation, which contacts the Division of the State Architect to confirm the violation and develop a plan to correct the violation. (Cal. Gov. Code, § 4453.5.)

c. Enforcement

The California Department of General Services, which includes the Division of the State Architect, enforces most laws relating to state and some local government facilities. (See Directory of Services for the phone number.) The Department must issue written approval before any plans for new construction or alteration are approved. (Cal. Gov. Code, §§ 4453 and 4454.) Any deviations from state building standards must be corrected within 90 days of discovery of the violation. (Cal. Gov. Code § 4452.) A district attorney, city attorney, or the California Attorney General may bring an action to force a violator to comply with the law. Actions by private individuals may also be possible. (Cal. Gov. Code, § 4458; Cal. Gov. Code, § 54961(a).)

The building department of every city and county is the primary responsible enforcer of the laws which cover private facilities open to the public. In addition, a district attorney, city attorney, the Department of Rehabilitation, or the Attorney General can bring an action to

halt a violation. (Cal. Gov. Code, § 4452.) Actions by private individuals are also possible. (Cal. Health & Saf. Code, §§ 19958 and 19958.5.)

Before the Attorney General will consider your complaint, however, you must first file a complaint with the appropriate local building official so that he/she has the opportunity to resolve it.

A city or county may appoint an appeals board consisting of two disabled individuals, two people experienced in construction, and another member of the public to hear appeals regarding decisions by the city or county building department on complaints for violations of any access laws. (Cal. Health & Saf. Code, § 19957.5.)

#### D. Specific Accessibility Standards and Regulations

In addition to the general access statutes discussed above, California and federal regulations provide a comprehensive set of requirements covering almost all important areas of accessibility for persons with physical and sensory disabilities. California's regulations are found in Title 24 of the California Code of Regulations and are designed to comply with the requirements of the ADA. A copy of Title 24 may be acquired through the Division of the State Architect<sup>13/</sup> or may be found in your local law library in the California Building Standards Code. In addition, your city or county building department will have a copy on file and helpful guides may also be purchased from private publishers. (Cal. Gov. Code, § 4450 et seq.; Cal. Health & Saf. Code, § 19955 et seq.)

These regulations, some of which are discussed below, describe specific accessibility requirements which apply to buildings and facilities covered by the access statutes. Exceptions may be granted to many of the requirements, but only if compliance would pose an unreasonable hardship. Even when unreasonable hardship is demonstrated, some form of "equivalent facilitation" must usually be provided to make the facility usable by disabled persons.

In addition to the regulations, California has enacted specific statutes directed at providing access to various types of facilities. For example, stadiums, public parks and gas stations are all addressed by specific laws.

Remember that the regulations discussed below are not a complete list.

##### 1. Restrooms, Drinking Fountains and Public Telephones Must Be Accessible

Buildings open to the public must have signs posted which indicate the location of restroom facilities accessible to disabled persons. Signs on restroom doors must be in the shape of a circle for women's restrooms, a triangle for men's restrooms, and a triangle interposed upon a circle for unisex restrooms. (Cal. Code Regs., tit. 24, pt. 2, § 3105(A) (b) et seq.)

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13. 1300 I Street, Suite 800, Sacramento, California 95814.

Toilet facilities must have sufficiently wide doorways and must have grab bars. Restroom components, such as waste paper baskets and sinks, must be accessible. Where bathing facilities are provided for the public, clients, or employees, at least one such facility (and not less than one percent of all facilities) must be accessible. A certain number of lockers must also be accessible. (Cal. Code Regs., tit. 24, pt. 2, § 3105A (b) 2.)

Water fountains must be accessible and must be placed so that they do not pose a danger to visually-impaired persons. If it would pose an unreasonable hardship to move a fountain out of the path of travel, then the ground must be textured so as to alert visually-impaired people to its presence. (Cal. Code Regs., tit. 24, pt. 2, § 3105A (d).)

All public telephones in buildings covered under the statutes must be accessible and at least 25% must be equipped for use by hearing-impaired individuals. If a bank of public telephones is provided, at least one must be so equipped. (Cal. Code Regs., tit. 24, pt. 2, § 3105A (d)2.)

## 2. Entrances Must Be Accessible

All new entrances must be designed so as to be accessible to disabled individuals. If creating accessibility in an existing building would create an unreasonable hardship, then there must be at least one entrance accessible to disabled people. (Cal. Code Regs., tit. 24, pt. 2, § 3301 (h).) Both doors of double doors designated as a public entrance must be kept unlocked during normal business hours. (Cal. Health & Saf. Code, § 13011.)

## 3. Stadiums, Grandstands, Sports Facilities, Auditoriums, Theaters, and Related Entertainment Facilities Must Be Accessible

Any entertainment facility approved for construction after January 1, 1985 must provide seating or accommodations for disabled people in a variety of locations to allow for a range of admission prices. Both private and public entertainment centers are covered by this law, including theaters, concert halls, and stadiums. (Cal. Health & Saf. Code, § 19952.)

A district attorney, city attorney, or the California Attorney General can bring an action to halt a violation. In addition, if you believe that you have been denied access required by this law, you can bring an action in court and may be awarded attorney's fees if you prevail. (Cal. Health & Saf. Code, §§ 19953 and 19954.)

In stadiums and other sports facilities, spectator seating, the customer side of ticket booths, participation areas, clubrooms and locker rooms must all satisfy accessibility requirements. (Cal. Code Regs., tit. 24, pt. 2, § 3103A (b)(3) et seq..)

In auditoriums and theaters, seating and toilet facilities for disabled persons must be accessible from the lobby or from a primary entrance. Seating spaces must be available for both wheelchair-users and semi-ambulant individuals. All such seating must comply with fire and panic safety requirements. (Cal. Code Regs., tit. 24, pt. 2, § 3103A (b) 2A (i) and (iv).)

Stages and orchestra pits must be accessible to physically disabled persons, and ticket booths and refreshment stands must be accessible on both the customer and employee sides. (Cal. Code Regs., tit. 24, pt. 2, § 3103A (b)2 B.)

#### 4. Curbs and Sidewalks Must Be Accessible

Any curb or sidewalk intended for public use must be accessible, regardless of where it is located. (Cal. Health & Saf. Code, § 19956.5; Cal. Gov. Code § 4450.) The curb or sidewalk must be easily accessible by means of ramps or other devices. To ensure that the ramp is easily accessible, no one may park within three feet of any sidewalk access ramp which is next to a crosswalk and is designated by either a sign or by red paint. (Cal. Veh. Code, § 22522.)

A major concern for individuals with disabilities who use wheelchairs is the availability of curb ramps. Alterations to the curb, sidewalk, or street require the removal of barriers or the construction of ramps or other devices to aid accessibility. If the government, or a private entity, builds a new street or sidewalk, then it must be made so as to be accessible to disabled individuals if it is to be used by the public. Whenever a local government resurfaces a street, the government has made an alteration and is therefore required to alter the curb to provide ramps or slopes at the intersections if they do not already exist.<sup>14/</sup>

#### 5. Historical Buildings

Historical buildings may be subject to case-by-case review when alterations are planned, rather than a strict application of disabled access standard access regulations. Alternative building regulations have been developed for use when an historical building is restored or relocated. (Cal. Health & Saf. Code, § 18954; Cal. Code Regs., tit. 24, pt. 8.)

#### 6. Gas Stations

Gas stations must provide disabled people with refueling service at the self-service price. Individuals must display a disabled person's identification from the Department of Motor Vehicles in order to receive this benefit. Self-service stations and convenience stores which never provide full service are exempt from this requirement, but pay stations at such

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14. There is a disparity between federal and state law regarding the lip on the curb ramp (state law requires a 1/2" lip; federal law requires no lip) and the use of truncated domes on the curb ramp to warn the visually-impaired of the existence of the ramp (state law requires it; federal law does not). At present, for certain federally-funded street projects which mandate that federal law override state law (usually intersections at state highways), you should check with your local building department, the Division of the State Architect or the ADA Hotline for advice on accessibility requirements. Title 24 is being interpreted by the Division of the State Architect consistent with federal case law interpreting the ADA to require for the provision of accessible curb ramps when streets are resurfaced. However, if the government has made only minor repairs to the street, then the curbs probably will not have to be altered. (See *Kinney v. Yerusalim* (3rd Cir. 1993) 9 F.3d 1067.)

businesses must still be accessible. In addition to other remedies available, a gas station owner or employee who disregards this law commits an infraction and may be fined \$25. A disabled individual may file a complaint with the Director of the Department of Rehabilitation, and the California Attorney General, a district attorney, or a city attorney may bring an action to halt a violation. (Cal. Bus. & Prof. Code, § 13412.)

#### 7. Tax Deductions

Tax deductions are available for individuals who repair or remodel buildings or vehicles in order to increase access for disabled people. (Cal. Rev. and Tax. Code, § 24383.)

#### 8. Outdoor Recreation, Parks and Recreational Facilities

California's policy is to increase accessibility to the state's scenic, natural, historic, and cultural resources. The policy includes, but is not limited to, walking trails, bikeways, horseback riding trails, boat docks, picnic areas, cross-country ski trails, and heritage corridors. (Cal. Pub. Resources Code, § 5070.5.)

Access regulations require that campsites, beaches, picnic areas, boat docks and fishing piers, and portions of trails and paths be usable by disabled persons. Nature and educational trails must be made accessible to blind persons by the provision of rope guidelines and of accessible information and guide signs. Compliance with these regulations is not necessary where the natural environment would be materially damaged. If permanent facilities are provided, such as restrooms or picnic tables, then at least one must be accessible. (Cal. Code Regs., tit. 24., pt. 2, § 3103A (g).)

Disabled individuals who receive state aid may be eligible for a Golden Bear Pass allowing free day use access to most state parks for the disabled individual and his or her spouse. The pass costs \$5.00 and is available from the Department of Parks and Recreation. (Cal. Pub. Resources Code, §§ 5011.)

At least a portion of playground equipment purchased by public agencies as of Jan. 1, 1979 shall be accessible whenever equipment is available at a comparable cost and quality to standard equipment. (Cal. Pub. Resources Code, § 5411.)

#### 9. Signs and Identification

The International Symbol of Accessibility must be displayed at accessible building entrances and in the lobbies of buildings which have been remodeled to provide accessible sanitary facilities. (Cal. Code Regs., tit. 24, pt. 2, §§ 3105A (e)(8) and 3106A (c).)

#### 10. Clear Floor or Ground Space

Building design must allow for the clear movement and maneuvering of wheelchairs. (Cal. Code Regs., tit. 24, pt. 2, § 3103A et seq.) Objects protruding from walls (for example, telephones) may not obstruct the movement of wheelchairs. Building design must also take into consideration the needs of visually-impaired individuals. For example, objects protruding from walls in public buildings, public accommodations, commercial buildings

and publicly-funded housing, which have leading edges between 27" and 80" above the finished floor, may only protrude 4" from the wall into passageways. This helps ensure that a visually-impaired individual will avoid hazards undetectable by standard cane technique. (Cal. Code Regs., tit. 24, pt. 2, §§ 3105A (k) and 3105A (k) 2.)

#### 11. Dining and Bar Facilities

Wheelchair access must be provided in dining and bar facilities. Access must be provided to all areas where functional activity occurs. There must be a certain number of wheelchair seating spaces. Cafeteria line aisles and restrooms must also be accessible. (Cal. Code Regs., tit. 24, pt. 2, §§ 3103A (b)(4), et seq.. See *People ex rel. Deukmejian v. CHE, Inc.* (1983) 150 Cal.App.3d 123.)

#### 12. Religious Facilities

The sanctuary and assembly areas of religious facilities must be accessible and must provide wheelchair seating spaces. Classrooms, offices, and restrooms in such religious facilities must also be accessible. (Cal. Code Regs., tit. 24, pt. 2, § 3103 (b)(5) et seq..)

#### 13. Office Buildings and Personal and Public Service Facilities

Facilities covered by these regulations include all those used by the public as customers, clients, or visitors, or facilities which may be places of employment. Included are all types of business and professional offices, including insurance, real estate and attorneys' offices, all types of sales establishments, and all personal and public service facilities, including banks, laundromats, hospitals, police stations, courtrooms, fire stations, and automated teller machines. (Cal. Code Regs., tit. 24, pt. 2, §§ 3103A (c) 2B and 3103A (c) 2 D; *Donald v. Sacramento Valley Bank* (1989) 209 Cal.App.3d 1183.)

In business and professional offices, areas to be made accessible include client and visitor areas, toilet facilities, conference rooms, and employee work areas. In sales establishments, sales and display areas must be accessible, as well as employee work areas and some check-out stations. Where fitting or dressing rooms are provided, at least one must be accessible. Finally, client and visitor areas and employee work areas must be accessible in personal and public service facilities.<sup>15/</sup> Factories and warehouses must also comply with broad accessibility requirements. (Cal. Code Regs., tit. 24., pt. 2, § 3103A (c) 3, et seq..)

#### 14. Educational and Library Facilities

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15. There is an exception for floors above the first floor where no elevator service is provided in buildings under three stories tall and less than 3000 square feet per story. Excluded from this exemption are sanitary facilities, which still must be accessible to the disabled. (Health & Saf. Code, §§ 19955.5 and 19956.5; Cal. Code Regs., tit. 24, pt. 2 §§ 3105A (c) and 5102, et seq..)

In educational facilities, laboratory rooms must provide a certain number of work stations usable by physically disabled students, and study carrels and teaching facility cubicles must be accessible. General use areas in libraries must be accessible, and open book stacks must allow wheelchair access to the aisle. (Cal. Code Regs., tit. 24, pt. 2, § 3103A (d), et seq..)

#### 15. Hotels, Motels, and Publicly-Funded Living Accommodations

A certain number of guest rooms in private lodging facilities must be accessible, including sanitary facilities. Public rooms and recreational facilities in private lodging must also comply with certain accessibility requirements. Some publicly-funded living accommodations must meet accessibility requirements (Cal. Code Regs., tit. 24, pt. 2, § 3103A (h)), although arguably they must be publicly-funded and open to the general public. (*Berkeley Center for Independent Living v. Coyle* (1996) 42 Cal.App.4th 874.)

#### 16. Courtrooms

Hearing-impaired individuals may request the use of assistive listening systems or computer-aided transcription equipment to assist their participation in any civil or criminal court proceeding. Each county is required to have at least one portable listening device for use by the courts. In any civil or criminal proceeding where a hearing-impaired individual is a participant, the court proceeding shall not be allowed to commence until the requested listening assistance equipment has been provided. In addition, jury boxes, judges' benches, witness stands, jury rooms and other court facilities must be made accessible in all new or remodeled facilities. (Cal. Civ. Code, § 54.8; Cal. Evid. Code, § 754; Cal. Code Regs., tit. 24, § 3103 (A)(c) 2F (iv).)

#### 17. Elevators

Elevators must be designed so as to accommodate wheelchairs. Elevators must stop within one-half inch of the building floor level, and elevator floor buttons must be within reach of a wheelchair user. Passenger elevators must be located near a major path of travel. All new elevators must have braille and raised arabic numbers next to the buttons designating each floor. Existing elevators must also satisfy this requirement, unless an unreasonable hardship would result. The number of the floor must appear both in braille and in raised arabic numbers on the outside of the elevator door. All entrances to each building covered under this law must be accessible to disabled people. (Cal. Code Regs., tit. 24, pt. 2, § 5103, et seq..)

#### 18. Miscellaneous

- If emergency warning systems are required, they must warn hearing-impaired persons by the use of flashing lights. (Cal. Code Regs., tit. 24, pt. 2, §§ 3104A (e).)
- Mobile home parks are prohibited from applying any restrictions on pets to guide dogs, signal dogs, or service dogs. (Cal. Civil Code, § 798.33.)

- Public swimming pools must be accessible to disabled persons. (Cal. Code Regs., tit. 24, pt. 2, § 3103A (b)(3)(c) (iv).)
- Highway rest areas must provide at least one accessible sanitary facility, picnic area, drinking fountain, parking space, and information guide. (Cal. Code Regs., tit. 24, pt. 2, § 3103A (g)(2).)

## II. ALTERNATIVE VOTING PROCEDURES - STATE AND FEDERAL ELECTIONS

### A. State Elections

California law requires that notice of a polling site must state whether the location is accessible. Election officials must try to select accessible voting sites. If a site is not accessible, a disabled person can vote in a nearby accessible location.

If a voter is unable to mark a ballot, he or she must be permitted to vote with the assistance of not more than two persons, excluding employers, or their agents, or union representatives. The voter must declare under oath to a member of the precinct board present at the time that he or she is unable to mark the ballot. (Cal. Elec. Code, §§ 12280, 13004, and 14282.)

### B. Federal Elections

Any voter requiring assistance because of blindness or disability to vote in a federal election may receive assistance from a person of the voter's choice. (42 U.S.C. § 1973aa-6.) State and political subdivisions must ensure that registration and polling places for federal elections are accessible to handicapped and elderly persons, or that alternative means for casting ballots are provided. Registration and voting aids which are required include:

- instructions, printed in large type, conspicuously displayed at registration and polling places; and
- information by telecommunications for hearing-impaired people.

If a state or political subdivision does not comply with this law, the United States Attorney General or anyone affected by the noncompliance can bring a lawsuit in court. (42 U.S.C. § 1973ee.)

## III. ACCESS TO TRANSPORTATION

### A. Driving and Parking

#### 1. Driver's Licenses



The right to a driver's license is not absolute, and licensing standards vary from state to state. In California, a physically or mentally disabled person may not be refused a driver's license if the Department of Motor Vehicles (DMV) decides the disability does not affect the individual's ability to operate a vehicle. By statute, the DMV will not issue a license to a person with a disorder characterized by lapses of consciousness, but the DMV must make license determinations on a case-by-case basis and must issue licenses to persons capable of safe driving. (Cal. Veh. Code, §§ 12806 and 12805; *Smith v. DMV* (1984) 163 Cal.App.3d 321.)

The DMV may require a person to use special adaptive devices if necessary to assure safe driving. (Cal. Veh. Code, §12813.)

## 2. Parking Privileges

California has enacted a number of provisions granting special parking privileges to disabled people who drive. In order to take advantage of most of these privileges, a disabled person's vehicle must display either a distinguishing license plate or distinguishing placard, both of which can be obtained on a permanent or temporary basis from the DMV. (Cal. Veh. Code, § 22511.55 et seq.) The license plate is free of additional charge, and the placard costs \$6.00 for two years. The plates cannot be loaned to others. (Cal. Veh. Code, § 4461.) If lost or stolen, they can be replaced without recertification of eligibility. (Cal. Veh. Code, § 22511.55.)

Parking spaces identified with blue curb paint are exclusively for the use of disabled people. (Cal. Veh. Code, § 21458 (a)(5).) Vehicle Code § 22522 prohibits parking a vehicle within three feet of a sidewalk access ramp for the disabled adjacent to a crosswalk if the area adjoining the ramp is designated with a sign or red paint. Local authorities generally decide where special parking spaces will be located. In addition to designating reserved parking spaces on streets and in public lots, local authorities may require private parking facilities which are open to the public to reserve a certain number of spaces for the vehicles of disabled people. Any parking facility controlled by a state agency must reserve a certain number of spaces. If a state agency does not have its own parking facility, the agency must ask local authorities to reserve on-street spaces immediately adjacent to the agency property for the use of disabled people. (Cal. Veh. Code, §§ 21107.8, 22511.7 and 22511.8; Gov. Code, § 14679.)

In addition to parking in reserved spaces, all vehicles which display distinguishing license plates may park without limit in restricted time parking spaces, and in metered spaces without paying, although vehicles displaying disabled placards reported lost or stolen or which are otherwise invalid may be cited. (Cal. Veh. Code, §§ 22511.5, 22511.57, and 22652.6; certain red, yellow and white zones are not included.) Disabled drivers must still observe parking regulations which prohibit all stopping, parking or standing, or which reserve spaces for special types of vehicles. (Cal. Veh. Code, § 22511.5.) Vehicle Code § 42001.5 requires the court to impose a fine of not less than \$250 on any person convicted of specified parking violations, which can only be suspended if the person convicted possessed a placard or plate but failed to display it. A court can suspend all but \$100 of a fine imposed for blocking a disabled access curb or ramp.

B. Mass Transit and Interstate Transportation

1. State Law

a. Accessibility of Equipment and Structures

California law provides that state agencies, boards, and departments, local governmental subdivisions, districts, public and quasi-public corporations, local public agencies and public service corporations, cities, counties and municipal corporations in awarding contracts for operations, equipment or structures shall require that all fixed-route transit equipment and public transit structures be built so that individuals with disabilities shall have ready access to, from, and in them. (Gov. Code, § 4500; 70 Cal. Ops. Atty Gen. 70 (1987.)) This section also provides that if state standards are higher than the ADA, those state standards shall be complied with. (See also discussion of Civil Code, § 54.1, *supra*, regarding accessibility of public transportation.)

Section 99220 of the Public Utilities Code sets forth a legislative finding that since public transportation systems provide an essential public service, they should be designed and operated so as to encourage maximum utilization by handicapped persons. A "handicapped person" is defined as "any individual who by reason of illness, injury, age, congenital malfunction, or other impairment or temporary incapacity or disability, including, but not limited to, any individual confined to a wheelchair, is unable, without special facilities or special planning or design, to utilize public transportation facilities and services as effectively as a person who is not so affected. (A temporary incapacity or disability is one which lasts more than 90 days; Cal. Pub. Util. Code, § 99206.5.) Cities or counties are authorized pursuant to section 99260.7 of the Public Utilities Code to file a claim for state funds to provide transportation services using vehicles for the exclusive use of handicapped persons.

2. Federal Law

a. General Provisions

1. Public Entities, Recipients of Federal Funding, and the Federal Government

The ADA provides that public entities must make all services, programs and activities accessible to individuals with disabilities. This general provision extends to transportation services such as buses, trains, and other conveyances provided by state and local government. It also extends to the facilities and stations which provide access to these services. In addition, the Rehabilitation Act ensures that all recipients of federal financial assistance and federal agencies themselves provide access to transportation services and facilities.

2. Private Entities

The ADA also provides that all public accommodations operated by private entities be accessible to disabled individuals. Private entities include all privately owned businesses and organizations which offer services to the public. This means that public transportation provided by private entities, such as buses, trains and taxi cabs, is subject to accessibility requirements.

The ADA makes a distinction between private entities which are primarily engaged in the business of transportation and private entities which provide transportation services incidental to other types of business. Private entities which are primarily engaged in the business of transportation are held to strict accessibility requirements. Private entities primarily engaged in providing transportation must make reasonable modifications to their vehicles and must provide auxiliary aids and services which will aid in creating accessibility. Reasonable modifications may include removing existing barriers where such modifications would not be an undue burden to the business. (42 U.S.C. §§ 12182 and 12184.)

### 3. Exceptions

While all forms of transportation offered to the public must be accessible, this does not mean that structural alterations must necessarily be made to all transportation vehicles. Rather, transportation systems must be accessible in a manner that provides disabled individuals with service comparable to that offered to the non-disabled. Accessibility rules take into account the need to balance the cost of altering existing transportation systems with the goal of achieving full accessibility. The rules and exceptions which apply to the various modes of transportation are set out in more detail below.

#### b. Buses

##### 1. Buses Operated By Public Entities

All new buses operated by public entities must be designed so that they are readily accessible and usable by individuals with disabilities, including individuals who use wheelchairs. This applies to all new buses which were ordered after July 26, 1990. Used vehicles purchased or leased after that date must also be readily accessible and usable by individuals with disabilities, unless the public entity can show that it used good faith efforts to purchase or lease accessible used buses and that none were available. Buses which are remanufactured so that they will last at least another 5 years are also required to be readily accessible and usable by the disabled, including individuals who use wheelchairs. (42 U.S.C. § 12142.)

If a remanufactured vehicle has been made to be accessible to the maximum extent possible, then such a vehicle will comply with accessibility requirements. Historic vehicles need not be made accessible if modifications would significantly alter the historic character

of the vehicle. (42 U.S.C. § 12142 (c)(2).) Some transit systems which are considered "demand responsive" and do not have fixed routes may continue to purchase and lease non-accessible vehicles, but they must operate a system, which when viewed in its entirety, provides an equivalent level of service for disabled individuals. (42 U.S.C. § 12144.)

In addition, systems which do not provide fully accessible buses are required to provide paratransit and other special services in order to provide a level of service which is comparable to the service provided individuals without disabilities. Paratransit must also be comparable to the extent practical with the response time provided to individuals without disabilities. However, commuter bus service is exempt from this requirement. (42 U.S.C. § 12143.)

## 2. Buses Operated By Private Entities

Buses operated by private entities are generally subject to the same accessibility rules as those applied to government-funded bus systems. Private entities may not purchase or lease new buses which are not readily accessible and usable by individuals with disabilities, including individuals who use wheelchairs. (42 U.S.C. § 12186; 49 C.F.R. § 37.131 et seq..)

"Over-the road buses," which are buses with baggage compartments located underneath the passenger section, are not required to be structurally altered to accommodate wheelchairs and are not required to provide accessible bathrooms. However, they are required to be accessible in all other aspects, such as by providing handrails and slip-resistant floors where wheelchairs or mobility aid users are to be accommodated. (42 U.S.C. § 12186; 49 C.F.R. § 38.151 et seq..)

Private entities which are primarily engaged in the business of transportation must make reasonable modifications to existing buses and must provide auxiliary aids and services in order to create accessibility. Where an entity uses vehicles with a carrying capacity of 8 passengers or less, it is required to purchase accessible vehicles, unless the entity provides the same level of service to disabled passengers when the system is viewed in its entirety. The same level of service means that the frequency, response time, and destinations covered must be equivalent. (42 U.S.C. § 12184.)

Private entities which are not primarily engaged in the transportation business are required to purchase new buses which are readily accessible and usable by disabled individuals, including wheelchairs users. However, if the vehicle has a carrying capacity of 16 passengers or less, then the vehicle is not required to be accessible, but only if the private entity operates a system which provides the same level of service to disabled users when viewed in its entirety. Public entities which operate a purely demand responsive system - where there is no fixed route - are required to purchase accessible vehicles, unless they can show that the system, when viewed in its entirety, provides the same level of service to disabled users. (42 U.S.C. § 12182.)

### c. Trains, Street Cars and Other Rail Vehicles

#### 1. Rapid and Light Rail Operated By Public Entities

It is considered discrimination under the ADA for a public entity to purchase or lease a rapid or light rail vehicle which is not readily accessible and usable by disabled people, including those who use wheelchairs. A used vehicle must be accessible unless the public entity can demonstrate that it has made good faith efforts to purchase an accessible used vehicle but that none were available. These requirements began operating in August of 1990. (42 U.S.C. § 12142.)

The same requirements apply to rail vehicles which have been remanufactured to extend the use another five years, unless the vehicle has been made accessible to the maximum extent possible.

Historic rail vehicles are excepted from the general rule, but only if modifications would significantly alter the historic character of the vehicle.

In addition to rules requiring accessible vehicles, a public entity must provide paratransit services to the disabled to ensure that rail service is comparable to both the level and response time of designated public transportation services provided to individuals without disabilities. Paratransit is not required, however, if the public entity can show that such services would impose an undue financial burden. (42 U.S.C § 12143.)

The ADA also mandates that a public entity provide at least one car per train, where two or more vehicles operate as a train, which is readily accessible and usable by disabled people. (42 U.S.C § 12148.)

## 2. Intercity and Commuter Rail Operated By Public Entities

The same general rules apply to larger trains that apply to rapid and light rail transportation. Public entities such as Amtrack or local commuter authorities must purchase or lease readily accessible or usable vehicles subject to the same general exceptions allowed for rapid and light rail.

On intercity trains, there must be at least one space to park, and one space to store and fold, a wheelchair for every two passenger coaches. In the year 2000, this requirement will be one wheelchair space for every passenger car in the train. Accessible bathrooms are required on coaches which provide wheelchair spaces. On trains which provide food service in either single or bi-level cars, auxiliary aids and services must be provided to ensure that the disabled passenger is provided equivalent food service to that provided to other passengers. (42 U.S.C. § 12162; 49 C.F.R. § 37.91.)

Accessible commuter cars need not contain an accessible restroom if none is provided for non-disabled passengers, and no space to fold and store a wheelchair or transfer seat is required. (42 U.S.C. § 12162.)

## 3. Rail Operated By Private Entities

Rail operated by private entities is subject to the same accessibility rules as other businesses providing public accommodations. Private entities have an obligation to remove structural barriers and to make alterations where readily achievable. If such alterations are not readily achievable, then the public entity has the duty to use alternative methods of providing services if they are readily achievable. However, public entities are not required to retrofit cars for hydraulic lifts. (42 U.S.C. § 12182 (b)(2)(A)(iv) and (v).)

Private rail is also subject to the same rules as rail provided by public entities; for example, all new passenger cars must be readily accessible to and usable by disabled people. This applies to used cars not already owned or leased by an entity and to cars remanufactured to extend their life ten years. (42 U.S.C. § 12184.)

Remanufactured cars need only be made usable to the extent feasible, and historic cars are granted the same exceptions given to those operated by public entities. (*Id.*)

#### d. Stations and Terminals

##### 1. Facilities Operated By Public Entities

Transportation facilities are subject to the same types of accessibility requirements as other buildings. New facilities must be built so that they are readily accessible and usable by disabled people, and any alterations to existing buildings must be done so that they are made accessible and usable to the maximum extent feasible. Whenever an area containing a primary function is altered, the bathrooms, telephones, drinking fountains, and path of travel must also be made accessible, unless disproportionate in cost and scope to the overall alterations. (42 U.S.C. 12146 and 12147 (a).)

In addition to the general rules, "key stations" serving rapid and light rail must be made accessible no later than July 26, 1993. Public entities may apply for extensions where making a station accessible would involve extraordinarily expensive structural changes. (49 C.F.R. § 37.41 et seq..)

"Key stations" are chosen by the public entity based on the following criteria:

- stations where passenger boarding exceeds 15% of the average;
- transfer stations;
- connections to other modes of transportation, including major parking facilities, bus terminals, rail stations, passenger vessel terminals, or airports;
- end stations;
- stations serving major activity centers, including employment or government centers, institutions of higher education, hospitals, major health care facilities, or other major trip generators for the disabled;
- nearby accessible stations. (49 C.F.R. § 37.51.)

## 2. Facilities Operated By Private Entities

Transportation facilities operated by private entities are subject to the same requirements as other facilities housing public accommodations. (49 C.F.R. § 37.21 (a)(2); see section 1 above.) Generally, a place of public accommodation is required to facilitate access by:

- (1) modifying policies, practices, or procedures;
- (2) providing auxiliary aids and services; and
- (3) removing architectural barriers.

As previously noted, duties listed above may be avoided if a place of public accommodation can show that their performance would result in an undue burden (significant difficulty or expense), or would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations being offered. (28 C.F.R. § 36.301 et seq.) New facilities must be designed so that they are readily accessible to disabled people and any alterations must be made so as to create accessibility.

### e. Taxis

While providers of taxi service are not required to purchase or lease accessible automobiles, they are subject to the general ADA provisions against discrimination. For example, taxi service providers may not discriminate against disabled people by refusing to provide taxi services to individuals who can use them, refusing to assist with the stowing of mobility devices, or by charging higher fares or fees for carrying a disabled individual and his or her equipment/or service animal.

If a provider of taxi service purchases or leases a vehicle other than an automobile, then the vehicle is required to be accessible, unless an equivalent service is provided for disabled people. For example, taxi service providers who use vans in airport door to door service may only purchase non-accessible vans if they already provide an equivalent level of service for individuals with disabilities. An equivalent level of service means an equivalency in response time, fares, areas of service and availability. (49 C.F.R. § 37.29.)

### f. Reduced Fares

Mass transportation systems, whether trains or buses, which receive federal funds, are required to charge special rates for disabled and elderly passengers. During non-peak hours, rates for disabled and elderly passengers may not exceed one-half of the regular peak-hour fares. (49 C.F.R. § 609.)

### g. Enforcement

If you feel that you have been discriminated against by private or public entities providing transportation services, then the following options are available. First, under the ADA,

you always have the right to bring a private lawsuit against the offending party, whether it be a government agency or a private entity. If you decide to bring a lawsuit there is no requirement that you exhaust administrative remedies first and you may bring suit at any time - even if you are already involved in the administrative complaint process.

Second, you may also file a complaint with the United States Attorney General, who can force a violator of the ADA to comply with the law. If appropriate, the Attorney General will bring a lawsuit to force compliance on your behalf.

Third, you may file a complaint with the Department of Transportation's Office of Civil Rights, which will investigate your complaint and take the appropriate action. If the Department of Transportation deems it appropriate, it will refer your case to the Attorney General for enforcement in court. (49 C.F.R. §§ 27 (F), 37.11 and 127 et seq.; 28 C.F.R. § 36.502; and 49 C.F.R. § 37.11.)

### C. Air Travel

#### 1. General Law

The nondiscrimination mandate of Section 504 of the Rehabilitation Act has been held by the U. S. Supreme Court not to apply to airlines which do not receive direct federal financial assistance. (*United States Dept. of Transp. v. Paralyzed Veterans of America* (1986) 477 U.S. 597.) Unlike mass transit, most airlines are not recipients of direct federal subsidies. The ADA does not apply to aircraft. (42 U.S.C. §§ 12141 (2) and 12181 (10).) Nonetheless, all air carriers and commuter carriers, regardless of whether or not they receive federal assistance, must comply with certain nondiscrimination laws and regulations. To assure that airlines do not discriminate against airline passengers, Congress enacted the Air Carriers Access Act of 1986. The Act prohibits airlines from discriminating against disabled persons when they are otherwise qualified to use air transit. (49 U.S.C. § 41705.) Also, the ADA and the Rehabilitation Act still apply to services and accommodations provided by airlines and airports on the ground.

All airlines are prohibited from discriminating against an individual based on a disability. Disability is defined as: (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record of such an impairment; or (3) being regarded as having such an impairment. Courts which have decided cases brought under this law have found, for example, that it is illegal for an airline to require all disabled people to sign a "medical release form" stating that they could be removed from the flight at any time, and that it was discriminatory for an airline to require all blind passengers to sit in front row bulkhead seats. (*Jacobson v. Delta Airlines* (9th Cir. 1984) 742 F.2d 1202; *Hingson v. PSA* (9th Cir. 1984) 743 F.2d 1408.) An airline has discretion as to whom it will carry, but it may not arbitrarily decide to exclude individuals based on disability, and any decision to exclude a passenger must be based upon legitimate safety considerations. (See



*Adamson v. American Airlines* (1982) 457 N.Y.S.2d 771, *cert. denied* (1983) 463 U.S. 1209.)

## 2. Airports

Airport facilities are covered under the ADA and, if they receive federal funding, the Rehabilitation Act. This means that airports must provide access to individuals with disabilities under the same rules that apply to all public accommodations. Airports operated by public entities are subject to the ADA accessibility regulations for government services and programs.

New terminals must be accessible. Placement of elevators and other similar devices should minimize any extra distance wheelchair users must travel. Disabled people must be able to use the main ticketing, fare collection, and baggage check-in and retrieval areas. Airport operators must provide adequate assistance in boarding and deplaning. (42 U.S.C. §§ 12131 et seq. and 12181 et seq.; 14 C.F.R. § 382.21 et seq. and 49 C.F.R. § 27.1 et seq.)

Airport terminal information systems must accommodate the needs of sight-and hearing-impaired people by providing information both visually and orally. Seeing eye and hearing guide dogs may accompany their owners. At least one clearly marked telephone with a volume control or sound booster device must be available for persons wearing hearing aids, and sufficient telecommunications devices (TTY) must be available to permit hearing-impaired persons to communicate with airport personnel. (49 C.F.R. § 27.71 et seq..)

In addition, parking areas, loading zones, waiting areas, and public services must be accessible. (49 C.F.R. § 27.71 et seq..)

## 3. Services and Reservations

All air carriers are prohibited from discriminating against, denying services to, or providing separate or different services to a "qualified handicapped person." A "qualified handicapped person" is defined as a disabled person who pays for the transportation, who will not jeopardize the safe completion of the flight or the health and safety of others, and who can comply with reasonable requests of airline personnel (or is accompanied by someone who can ensure that the requests are complied with). (14 C.F.R. §§ 382.7 and 382.31.)

The facilities, services, and reservation systems of air carriers must be readily accessible and usable by disabled people. Each aircraft is also subject to accessibility regulations. For example, an aircraft, with more than one aisle, and in which lavatories are provided, must include at least one accessible lavatory for use by disabled passengers. All air carriers must ensure that hearing-and visually-impaired people have timely access to important information, and guide dogs must be permitted to accompany hearing-and visually-impaired passengers. (42 U.S.C § 12181 et seq.; 14 C.F.R. §§ 382.21 and 382.37.)

An air carrier may not require a disabled person to be accompanied by an attendant, except under limited circumstances when a carrier determines that an attendant is essential for safety. Circumstances where a carrier may require an attendant to accompany a disabled individual include: (1) where an individual is traveling in a stretcher or incubator; (2) where an individual with mental disabilities is unable to comprehend safety instructions; (3) where an individual with severe mobility disabilities is unable to assist in the evacuation of the aircraft; or (4) where an individual with both severe hearing and vision impairments cannot establish some means of communication with carrier personnel adequate enough to permit transmission of safety information. (14 C.F.R. § 382.35 (c).)

The need for minor assistance is not enough to require an attendant. A carrier may not refuse to transport an individual, traveling without an attendant, on the basis that the individual cannot feed himself or herself, if the individual elects not to eat during the flight. In addition, a concern by the carrier that assistance may be needed to allow a disabled individual to use inaccessible lavatory facilities, or may otherwise need extensive special assistance for personal needs, is not a basis to require an attendant to accompany a disabled individual on the flight. Where a disabled individual believes that he or she can travel independently, and is required by a carrier to bring an attendant on the flight, then the carrier must pay for the passage of the attendant. (14 C.F.R. § 382.35 (c).)

Carriers must allow disabled passengers to use canes and crutches and to keep them nearby during flight, and must allow folding wheelchairs on board when they are not a threat to safety. (14 C.F.R. § 382.41.) Airlines apply varying regulations to battery-powered chairs, and it is advisable to check with individual carriers. Carriers must provide assistance in boarding and deplaning without advance notice, unless special assistance is required (such as specialized equipment or additional personnel.) Carriers may not impose charges for providing facilities, equipment, or services which they are required to provide to disabled passengers. (14 C.F.R. §§ 382.43 and 382.57.)

#### 4. Enforcement

If you believe you have been discriminated against in air travel, you should contact the United States Department of Transportation or a private attorney.

### IV. ACCESS TO TELECOMMUNICATIONS

Both California law and the ADA require that telephone services be provided to hearing- and speech-impaired Americans. In 1990, the ADA added a new section to the Communications Act of 1934, directing the Federal Communications Commission (FCC) to establish regulations that will ensure that hearing- and speech-impaired individuals are provided with unlimited and affordable telecommunications services.

#### A. Telephone Systems

##### 1. Non-Emergency Services

##### a. Telecommunication Devices and Relay Services

Under California law, every telephone corporation must provide an accessible telecommunications device to any telephone subscriber who is certified as hearing-impaired. This device, usually called "Telecommunications Device for the Deaf" (TDD) or a "Teletype Device" (TTY), must be provided free of charge. Organizations which represent hearing-impaired people are also eligible for the special telecommunications device. (Cal. Pub. Util. Code, § 2881.)

A TDD or TTY is a device that resembles a typewriter with a message display used by hearing-and speech-impaired individuals to communicate with other TDD users.

Common carriers must also provide telecommunications relay services to hearing-or speech-impaired individuals that will allow them to communicate with those having unimpaired hearing and speech. (47 U.S.C. § 225; 47 C.F.R. § 64.603.) The California Public Utilities Commission (PUC) is required to establish a "dual party relay system," which allows hearing-impaired people to be connected, by way of intercommunication devices, with persons of normal hearing. This system is designed to make all phases of public telephone service accessible. (Cal. Pub. Util. Code, § 2881.)

"Telecommunication Relay Services" are the technical means by which TDD/TTY users and hearing individuals are placed in communication with each other, with typed and voice messages being translated between the parties. The ADA defines relay services as telephone transmissions services that permit communication by wire or radio between hearing individuals and those with hearing or speech impairments. (47 U.S.C. § 64.601 (7).)

In addition, communication assistants (individuals who translate conversation from text to voice and vice versa) must be trained in the specialized communication needs of hearing-and speech-impaired people. Services must be available 24 hours per day and calls may not be limited in terms of duration or number. (47 C.F.R. § 64.604 (a).)

Telephone companies may charge a certain amount to all subscribers in order to recover their costs in providing telecommunications devices for hearing-impaired people. Federal law allows any telephone carrier to recover costs for producing specialized terminal equipment for people with impaired hearing, speech, vision, or mobility. Thus, there is no financial burden on telephone companies which produce telecommunication devices. (47 U.S.C. § 610.)

#### b. Enforcement

The FCC is assigned the duty to enforce the requirements imposed on telecommunications services by the ADA. If you feel that your telecommunications services have violated the ADA, you may file a complaint with the FCC. The FCC will then refer your complaint to a state agency if the complaint falls within the state's jurisdiction, or the FCC will handle the complaint itself where it involves interstate telecommunications. However, if a state agency has not resolved the complaint within

180 days, the FCC will intervene to resolve the complaint. (Cal. Pub. Util. Code, § 2881; 47 U.S.C. § 225 (e) and 47 C.F.R. § 64.604.)

## 2. Emergency Services

In California, any county which provides emergency services must provide hearing-impaired teletype equipment at a central location to relay requests for emergency services. In addition, all "911" public safety answering points must have a telecommunications device capable of servicing the needs of the hearing-impaired. (Cal. Gov. Code, §§ 23025 and 53112.)

Litigation is currently under way to establish the right of the disabled to accessible freeway callboxes in accordance with Government Code Section 11135. If the litigation is successful, all callboxes provided by the state will have to be accessible. The case is *Thalheimer v. Los Angeles County Service Authority for Freeway Emergencies, et al.*, Los Angeles Superior Court No. BC 113690.

Under federal law, all "essential telephones" -- meaning coin-operated, emergency use, and other telephones which are frequently used by people with hearing aids -- must be compatible with hearing aids designed for telephone use. (47 U.S.C. § 610.)

### B. Television Broadcasting

#### 1. Emergency Information

Television stations must transmit emergency information both orally and visually when conducted under a national, State or local level Emergency Broadcast System (EBS) plan. Other emergency information may be broadcast visually and without sound. (47 C.F.R. § 73.1250.)

#### 2. Other Broadcasting

There are a number of ways of providing access to television programming for hearing-impaired individuals, none of which are wholly satisfactory from all perspectives. Providing sign language interpreters may not assist all individuals with hearing impairments. Open captioning, where written words on the screen are displayed to all viewers, provides the most access, but may be distracting to hearing viewers. Closed captioning, where written words are displayed only on those television sets that have a decoder, provides access only to people who can afford the decoder. All three methods impose some cost on the television station.

There are currently no laws or regulations which require television stations to provide any specific amount of broadcasting which is accessible to hearing-impaired viewers (except for emergency information, discussed above). A number of court cases have held that broadcast licenses are not a form of federal financial assistance, and therefore the FCC, which issues broadcast licenses, has no responsibility for enforcing the nondiscrimination mandate of Section 504 of the Rehabilitation Act (see discussion of

Section 504 in the Transportation section). When deciding whether or not to grant or renew broadcasting licenses, the FCC is required to consider whether a television station is acting in the public interest. Making this determination, however, does not involve considering whether the station is complying with Section 504. (47 U.S.C. §§ 307(a), 309(a); *Community Television of Southern California v. Gottfried* (1983) 459 U.S. 498; and *Ass'n. of Physically Handicapped v. FCC* (9th Cir. 1983) 721 F.2d 667, *cert. den.* (1984) 105 S.Ct. 121.)

Public television stations, which receive federal financial assistance, are subject to the Section 504 nondiscrimination mandate. Although courts have held that "some sort of affirmative modification of normal television broadcasting is required in order to compensate for the deaf and hearing-impaired viewers' inability to receive the audio portion," public television stations are not required to produce programs with open rather than closed captions, or to caption or sign every broadcast. (*Cal. Greater Los Angeles Council on Deafness v. Community Television* (9th Cir. 1983) 719 F.2d 1017, *cert. den.* (1984) 104 S.Ct. 35335.)

## CHAPTER 5

### EDUCATION

This chapter discusses the rights of persons with disabilities in primary and secondary education, pre-school education, and post-secondary education.

#### I. THE RIGHTS OF DISABLED CHILDREN IN PRIMARY AND SECONDARY EDUCATION

##### A. All Disabled Children Have a Right to a "Free, Appropriate, Public Education"

Disabled children have a right to a free public education appropriate to their needs, regardless of the nature or severity of their disability. This right is guaranteed by both federal and state law. The phrase used to describe the education that must be provided to disabled children is a "free, appropriate, public education." In the following sections, the terms "free," "appropriate," and "public" are explained in detail.

The parents of disabled children have a right to participate in any decision about the education of their child. Specifically, a school district must:

- inform parents of any decision to evaluate their child for special education;
- obtain parents' permission before evaluating their child;
- allow parents to attend and participate in all planning conferences;

- inform parents of any proposed changes in their child's special education; and
- listen to, consider carefully, and respond respectfully to any complaints by parents.

In addition, if parents are dissatisfied with the school district's decision, they can ask the California Department of Education and the courts to review that decision. In the following sections, the scope of the school district's duties are explained in detail.

## B. The Law

### 1. Federal Law

Before 1975, many disabled children were denied any education at all. In 1975, Congress passed a law, the "Education of the Handicapped Act," which confirmed the right of disabled children to a free, appropriate education. The Act was later amended and is now called the Individuals with Disabilities Education Act, or the IDEA. (20 U.S.C. § 1400 et seq.) Other federal statutes, such as the Rehabilitation Act and the ADA, also protect the right of disabled children to an education free from discrimination based on disabilities. (29 U.S.C. § 794 et seq.; 42 U.S.C. § 12131 et seq.)

Education is primarily the responsibility of states and local communities, rather than the federal government. For this reason, the federal statutes do not require the states to educate any children. The Rehabilitation Act instead prohibits discrimination against anyone on the basis of a disability in any program supported by federal funding. Since every state accepts federal money for its general education programs, every state is forbidden to discriminate against disabled children in education. (29 U.S.C. § 794.)

Under the IDEA, any state that wants federal money for the education of disabled children must prove to the United States Department of Education that it provides a "free, appropriate, public education" to all disabled children between the ages of 3 and 21. (20 U.S.C. §§ 1400 (c) and 1412.) The state must also show that it has procedures to insure:

- that all disabled children within the state are identified and contacted (20 U.S.C. § 1412 (2)(C));
- that all disabled children within the state are evaluated (20 U.S.C. § 1412 (2)(C));
- that an "Individualized Education Program" is prepared for every child in need of special education (this will be discussed below) (20 U.S.C. §§ 1412 (4) and 1414 (a)(5));
- that the services needed by a child are actually provided to the child (20 U.S.C. § 1412 (6));

- that in adopting policies, programs and procedures for IDEA that there be public hearings, adequate notice of those hearings, and an opportunity for comment from the public (20 U.S.C. §§ 1415; 1412 (7)); and
- that parents are permitted to get both administrative and judicial review of any school district decision concerning their child (this is discussed in more detail below.) (20 U.S.C. § 1415.)

By accepting federal money, a state assumes the duty to provide to every disabled child within the state an appropriate primary and secondary education. (*Board of Education v. Rowley* (1982) 458 U.S. 176.)

## 2. State Law

California accepts federal money for the education of disabled children, and therefore must provide disabled children with a free, appropriate education under the federal statutes discussed above. In addition, California itself has enacted statutes concerning the education of disabled children, and these statutes sometimes provide greater benefits than federal law. (Cal. Ed. Code, § 56000 et seq..)

### C. A Free, Appropriate, Public Education

#### 1. "Special Education" and "Related Services"

States must provide both special education and related services for disabled children.

##### a. Special Education

"Special education" means instruction specially tailored to the needs of a disabled child. (*Abrahamson v. Hershmann* (1st Cir. 1983) 701 F.2d 223 ; *Kruelle v. New Castle County School District* (3rd Cir. 1981) 642 F.2d 687.) Usually, instruction is in the same subjects taught to other children -- reading, spelling, arithmetic, science, American history, etc. -- in a way or at a pace that helps the disabled child learn. However, special education can also include instruction in basic aspects of daily life -- toilet training, personal care, etc. -- if that is the sort of instruction a disabled child needs. Special education can also include instruction in methods of communication specially tailored to the needs of a disabled child, such as American Sign Language and the use of Bliss symbols.

Special education also includes physical education, either offered to disabled children along with other children or modified to meet the unique needs of the disabled child. (20 U.S.C. 1401 (a)(16).)

##### b. Related Services

"Related services" are supportive services that enable disabled children to take advantage of their special education. Examples of related services are:

- transportation to and from school, between schools, and between or within school buildings, including the use of wheelchair - accessible buses and vans;
- occupational and physical therapy;
- speech therapy; and
- school health services.

Related services are services other than instruction that make the instruction meaningful. Medical services provided by a doctor are not included, but school health services may administer drugs or services prescribed by a doctor. Necessary services which a nurse or lay person could perform must be provided. For example, intermittent catheterization for a child suffering from spina bifida must be provided, since the procedure can be accomplished by a trained nurse or lay person. (*Irving Independent School District v. Tatro* (1984) 468 U.S. 883.) Since there are so many different kinds of disabilities, it is impossible to list every kind of supportive service a child might need. If a child needs a particular service during the school day in order to attend or profit from school, then the school district generally must provide it. (20 U.S.C. § 1401 (a)(17); *cf. Nevada County Office of Education v. Riles* (1983) 149 Cal.App.3d 767.)

## 2. What Is An "Appropriate" Education?

### a. The Program Must Allow Progress In Learning

A school district must provide a disabled child with an "appropriate" education. A school district is not required to do everything possible to maximize the child's achievement or fulfillment of his or her potential. Under federal law, the school district simply must provide a disabled child with a special education that enables the child to make progress in learning.

### b. Mainstreaming Should Be The Goal

School districts are required to educate disabled children with non-disabled children to the maximum extent feasible, so long as the co-education of disabled and non-disabled children will meet the educational needs of the disabled child. (20 U.S.C. § 1412 (5)(B).) The right of disabled children to be educated with non-disabled children includes the right to participate in non-academic and extracurricular activities. The only situations which justify educating disabled children apart from non-disabled children are when:

- "mainstreaming" would be of no benefit to a disabled child;
- the benefits of educating a disabled child in isolation from non-disabled children far outweigh the benefits of "mainstreaming;"
- a disabled child disrupts the education of the non-disabled children; or
- the costs of educating a disabled child in an ordinary classroom are prohibitive.



Although cost is a legitimate consideration, the school district is required to make reasonable accommodations to enable a disabled child to attend school in a regular classroom. (See *Daniel R.R. v. State Board of Education* (1989) 874 F.2d 1036.)

c. Private or Boarding Schools Are Sometimes  
"Appropriate"

An appropriate education can include placement in a private school, including a boarding school, if a disabled child needs that placement in order to make progress in learning. A placement in a private day or boarding school is appropriate, however, only when the school district cannot provide a disabled child with an adequate education in the public schools. (*Burlington School Committee v. Department of Education* (1985) 471 U.S. 359.)

3. Public School Districts Are Responsible  
For Providing Education To Disabled Children

The responsibility of providing an appropriate education to disabled children is a public responsibility. The immediate responsibility rests with the school district. The ultimate responsibility rests with the California Department of Education. Small school districts can join together to meet their duties under the law. A group of small school districts acting together is called a "special education local plan agency" ("SELPA.") In this handbook, the local responsible agency is always called "the school district," but that includes SELPAs and the county education offices. Even if special education or related services are provided in a private school or by a private agency, the school district is responsible for planning and supervision of and payment for the private services. The school district cannot surrender its responsibility to a private agency or even to another public agency. (*Kruelle v. New Castle County School District* (3rd Cir. 1981) 642 F.2d 687.)

4. Education For Disabled Children Must Be  
Provided At No Cost To The Parents

Both special education and related services, must be provided at public expense, meaning at no charge to the parents. (34 C.F.R. § 300.8.) The school district must pay for experts who provide speech, physical, or occupational therapy, specially-qualified teachers, and special equipment needed by a disabled child in order to benefit from his or her special education. If the school district puts a child in a private school, then the school district must pay tuition and transportation. If the school district puts a child in a boarding school, then the school district must pay for the child's room and board, in addition to the costs of tuition and transportation.

There is one exception to the duty of the school district to pay for the education of a disabled child. If the parents reject an appropriate education offered to their child by the school district (for example, because they want to send their child to a religious school), then the school district must only pay for its own decision, not the parents' decisions. (*Teague Indep. Sch. Dist. v. Todd L.* (1993) 999 F.2d 127.)

D. Eligibility & Procedures

1. Who Is Eligible For Special Education and Related Services?

a. The Child Must Have A Disability

The benefits of the IDEA are available only to those who have "disabilities," as the term is defined in the Act itself. Disability is defined broadly and includes every condition -- organic, mental, or behavioral -- that might affect a child's performance in school.

Included are orthopedic impairments (for example, spina bifida and muscular dystrophy), sensory organ impairments (for example, deafness and blindness), neurological impairments (for example, epilepsy and cerebral palsy), mental illness (for example, autism), and mental disability (for example, Down's Syndrome). Specifically excluded from the definition of disabled are children who are disadvantaged because of environmental, cultural, or economic reasons. (Cal. Ed. Code, § 56026 (e).)

Nonetheless, while disadvantages caused by environmental, cultural, or economic factors are excluded, both federal and state law include "severe emotional disturbance" within the definition of disabled. Sometimes it is difficult to tell if a child's poor school work is caused by "severe emotional disturbance" or by social factors. The courts have decided that if a child is behaving in "emotionally disturbed" ways, then it does not matter what caused the child's behavior. If a child behaves in emotionally disturbed ways that interfere with his or her learning, then the school district is responsible for providing the child with special education and related services. (20 U.S.C. § 1401 (a)(1)(A) & (B); *Christopher T. v. San Francisco Unified School District* (N.D.Cal. 1982) 553 F.Supp. 1107.)

b. Children Usually Must Be Between Ages Five And Eighteen, But Some Older Children Are Also Eligible

All disabled children between the ages of five and eighteen whose disability adversely affects their performance in school are entitled to special education and related services. In addition, any disabled person between the ages of 19 and 21 is entitled to special education and related services if:

- the student was enrolled in or eligible for a special education program before he or she turned 19, and
- the student has not yet satisfied the graduation requirements applicable to him or her.

If an individual turns 22 while enrolled in a special education program, he or she may continue in that program until the end of the school year. (20 U.S.C. § 1412 (2); Cal. Ed. Code, § 56026.)

c. The Child Must Have A Record  
Of Poor School Performance

Having a disability or a health problem is not enough to make a child eligible for the benefits of the Act. A child must have a disability that actually affects school performance in a negative way. For example, a child with completely controlled epilepsy who is able to participate satisfactorily in a regular classroom would not be eligible for special education. Basically, special education and related services are only available to those who need them. (34 C.F.R. §§ 300.7 and 300.17.)

2. What Procedures Must Be Followed Before A Child May Receive  
Special Education And Related Services?

a. The Child Must Be Evaluated

(i.) Request An Evaluation

A child's eligibility for special education is determined by a process called "assessment" or "evaluation." The state and school districts are required to try and find all children who might be entitled to special education. However, anyone can request the assessment of a child. Requests for an assessment must be in writing. The school district must provide assistance to anyone making an oral request for the assessment of a child.

(ii.) A Child Cannot Be Evaluated Without Parental  
Consent

No child may be evaluated without his or her parents' consent. "Parent" includes any person having legal custody of the child. The school district must explain to the parents exactly how the assessment will be done. The explanation must be in writing and in the parents' own language. If the parents' primary method of communication is American Sign Language (ASL), then the explanation must be given in ASL. If the parents' own language cannot be written, then the explanation must be given to the parents orally in their own language, as well as in written English. If the parents agree to an assessment of their child, then they must sign a consent form provided by the school district. The school district must explain to the parents that they have a right to change their minds at any time, even after they have signed the consent form. If the parents refuse to consent to an assessment of their child, the school district may request a hearing to require the assessment. (34 C.F.R. § 300.500 et seq..)

(iii.) Testing Requirements

The persons actually doing the assessment of a child must be trained professionals. The tests used to evaluate a child must be fair, accurate, appropriate, and free of ethnic, cultural, or sexual bias. The tests must be given so that the results are not distorted by a child's disability and must, if at all possible, be given in a child's own language or method of communication. Tests must be given in every area that might explain a child's poor

school performance, including tests for hearing and vision. The persons who give the tests must make a written report on all tests given to a child. The parents are entitled to a copy of the report in their own language or method of communication. (20 U.S.C. § 1412 (5)(C); 34 C.F.R. §§ 300.530 and 300.543.)

(iv.) Parents May Request Independent Assessments

If the parents disagree with the results of the evaluation, they may ask for an independent evaluation of their child at public expense. The school district may either agree to pay for an independent evaluation, or it can ask for a review of the results of its tests by an independent hearing officer. If the school district agrees to pay for an independent assessment, the persons who do the independent assessment must be as experienced as the persons who did the school district's assessment. The parents may get an independent assessment of their child at their own expense at any time. If the parents do get an independent assessment, then the school district must consider it when deciding how to educate the child. (34 C.F.R. § 300.503.)

b. Planning A Disabled Child's Education

(i.) The "Individualized Educational Program"

Once it has been decided that a child has a disability which makes special education and/or related services necessary, the school district must develop an individualized educational program (or "IEP") for the child. An IEP is basically a plan of action for the education of a child. (20 U.S.C. 1401 (a)(20).) It must contain all of the following:

- a statement of the child's present educational performance;
- a statement of the educational goals for the child, both for the immediate future and for the school year;
- a statement about what type of special education and which related services the child will receive;
- a statement about the beginning date and duration of the special education and related services;
- a statement listing any needed transition services;
- a statement of the standards by which the child's educational progress will be measured; and
- a statement about how much of the child's time will be spent in a regular classroom and how much of the child's time will be spent in a special classroom.

(ii.) Development Of The IEP

The IEP is developed by a team of people, including the parents. The members of the team must include a representative of the school district and the child's teacher. The team can also include experts or other persons chosen by the school district and education experts the parents choose to include. The team may also include the disabled child, if appropriate. The team reviews the results of the assessment, decides what the child's special education and related services needs are, decides how the child's needs can best be met, and writes the IEP. The first IEP written for a disabled child generally must be developed within 50 days of the date on which the parents signed the form consenting to an assessment of their child. (Cal. Ed. Code, § 56344; 34 C.F.R. § 300.340 et seq.)

(iii.) The School District Must Facilitate Parental Involvement In Developing The IEP

The school district must make it as easy as possible for the parents of a disabled child to participate in the planning of their child's education. The school district must give the parents notice of the meetings of the IEP team in the parent's own language or primary method of communication, and must schedule the meetings at a time convenient for the parents. The parents have the right to present information to the rest of the team and to have their opinions carefully considered. If the parents do not speak English or are hearing-impaired, the school district must provide an interpreter for them at the meetings of the IEP team. The parents are entitled to a copy of their child's IEP at no cost to them. If the parents request it, the school district must give them a copy of their child's IEP written in their own language. (20 U.S.C. §§ 1401 (a)(20); 1412 (2)(B) (4) (6) and 1414 (a)(5); and 34 C.F.R. § 300.345.)

c. Placement in Special Education and Related Services

(i.) General Law

Once the evaluation and planning processes are completed, and the parents have given their consent, the school district must immediately begin to provide the special education and the related services listed in the IEP.

However, if the total cost of all special education and related services provided to a disabled child is greater than \$20,000 per year, the Superintendent of Public Instruction must review the IEP to determine if the IEP team made adequate efforts to find an appropriate, but less expensive, placement for the child. At most, this can delay the child's special education and related services for two or three weeks.

(ii.) Parental Consent Is Required In Order To Provide Special Education Or Related Services

No child may be placed in any special education program or provided with related services without the written consent of the child's parents. The parents may consent to only a part of the IEP and object to the rest. For example, the parents may consent to all or part of the related services listed in the IEP and refuse to consent to the proposed special education

program. If the parents consent to some part of the IEP, then the school district must immediately provide the services for which consent has been given. A parent may object to any part of the IEP, either on the ground that it is unnecessary or on the ground that it is inappropriate or inadequate. (Cal. Ed. Code, § 56346; 34 C.F.R. § 300.504.)

If the parents refuse to consent to any part of the IEP prepared for their child, then either the parents or the school district may request a hearing before an independent hearing officer provided by the California Department of Education. If the dispute is over a service demanded by the parents and denied by the school district, then the hearing officer must make an independent determination of the needs of the child. However, if the dispute is over a service offered by the school district and rejected by the parents, then the duty of the hearing officer is less clear. Because parents have a constitutional right to control and direct the education of their children, both the school district and the hearing officer may lack the authority to overrule the parents unless a child's presence is disruptive of a regular classroom or the parents are endangering the child. (However, see also *Wilson v. Marana Unified School District* (9th Cir. 1984) 735 F.2d 1178.)

d. Changes In A Disabled Child's Placement Or Education Program

(i.) There Must Be A Periodic Reassessment Of The Child

Every disabled child who receives special education or related services must be reevaluated at least once every three years. A reevaluation must also take place if the circumstances make it appropriate or if a child's parents or teachers request it. Reevaluations are conducted under the same rules that apply to initial evaluations. (34 C.F.R. § 300.534.)

(ii.) The IEP Must Be Reviewed At Least Annually

The IEP team must review and revise a disabled child's IEP at least once a year, when requested to do so by a child's parents or teachers or whenever a child is not making educational progress. The parents may request a review of their child's IEP no more than twice a semester. The procedures and protections applicable to the first IEP team meeting apply to later IEP team meetings. (20 U.S.C. § 1413 (a)(11); 34 C.F.R. § 300.146.)

(iii.) A School District May Not Change A Child's Placement Without Notice

Although parental consent is required before a child may be placed in a special education program for the first time, parental consent is not required before the school district changes a child's placement. However, if the school district plans to change a child's placement, it must give the parents notice of its plans in writing and in the parents' own language or primary method of communication. If the parents object to the plan, they may request a hearing before an independent hearing officer provided by the California Department of Education. (Cal. Ed. Code, § 56500 et seq.; 34 C.F.R. § 300.504.)

Not every change that a school district makes is considered a change in placement requiring detailed advance notice. For example, a change in the location at which the special education and related services are to be provided would not generally be considered a change in placement. A change in placement is a fundamental change in the type of special education or related services provided to a disabled child. For example, a change from a regular classroom to a special classroom would be a change in placement, and a transfer of a child from a school that offers a year-long program to a school that does not offer a year-round program would be a change in placement. (*Tilton v. Jefferson County Board of Education* (6th Cir. 1983) 705 F.2d 800, *cert. den.* (1984) 465 U.S. 1006; *Concerned Parents & Citizens v. New York Board of Education* (2d Cir. 1980) 629 F.2d 751, *cert. den.* (1981) 449 U.S. 1078.) Note that disabled children and their parents are entitled to a hearing before an independent hearing officer provided by the California Department of Education whenever the school district makes a decision that the parents believe denies their child a free, appropriate, public education. State hearings are discussed below.

#### (iv.) A Disabled Child May Not Be Expelled

A short suspension of a disabled child for misbehavior is not a change in placement necessitating detailed advance notice. Expulsion, however, is a change in placement. Therefore, a school district cannot use the procedures used in expelling other children in expelling disabled children. Although a school district can change a disabled child's placement if the child is disruptive, the school district cannot expel a child whose misbehavior is a manifestation of, or is caused by, his or her disability. Even when a disabled child may properly be expelled, the school district cannot refuse to offer some form of education to the child. (*Cf. Honig v. Doe* (1988) 484 U.S. 305; *Kaelin v. Grubbs* (6th Cir. 1982) 682 F.2d 595.)

#### (v.) Graduation Is A Change In Placement

Parents have a right to notice and an opportunity to object before a disabled child graduates if the child has not met district graduation requirements and is under the program's age limit. Graduation is considered a change in placement because it means termination of special education and related services. An IEP team must set special graduation requirements for a disabled child unable to meet the usual requirements. Parents participate as members of the IEP team.

### E. Administrative & Judicial Review

#### 1. Administrative Review

##### a. Parental Rights To Administrative Review

The parents of a disabled child have a right to administrative review whenever they are dissatisfied with a school district decision concerning their child. (Cal. Ed. Code, § 56500 et seq.) For example, the parents of a disabled child have a right to administrative review whenever they object to:

- the kinds of tests used by the school district to evaluate the child;
- the conclusions reached by the persons doing the evaluation of the child;
- the type of special education offered or denied the child and/or the related services offered or denied the child;
- the specific placement proposed for the child; or
- the denial of the parents' procedural rights (their rights to fair notice of all school district decisions concerning their child in their own language, their rights to participate in planning their child's education, etc.).

b. School District's Rights To Administrative Review

The school district also has the right to request administrative review. The school district can request administrative review whenever there is a disagreement between it and the parents.

c. Filing A Complaint And Holding A Mediation Conference

Administrative review begins when a complaint is filed with the Superintendent of Public Instruction. However, either party may request a voluntary mediation conference at any time. The mediation conference will be held within 15 days of the filing of a request for mediation with the superintendent. In a mediation conference, a disagreement is resolved only when both parties agree. If the parties cannot resolve all their disagreements, then the dispute must be resolved at an administrative hearing. (Cal. Ed. Code, §§ 56500.3 and 56503.)

d. Parents Have The Right To Inspect All Their Child's Records

The parents of a disabled child have the right to inspect and make copies of any and all records maintained by the school district concerning their child. The school district must make the records available for inspection and copying within five days of the parents' request to see them. The school district must also give the parents an opportunity to inspect and copy their child's records before a meeting of the IEP team, a mediation conference, or an administrative hearing. The school district may ask the parents to pay the costs of the copying of the records, but if the parents cannot afford the costs of copying, then the school district must give them free copies. (Cal. Ed. Code, § 56504; 34 C.F.R. §§ 300.502 and 300.566.)



e. Administrative Hearing

Any party may choose to present its evidence and argument through a lawyer. The Superintendent of Public Instruction must give the parents information on any free or low-cost representation available in the area whenever the parents request the information or file a complaint. If either party intends to use the services of an attorney at the administrative hearing, then they must inform the other party at least ten days before the hearing, or the hearing may be postponed. Parents must pay for their own attorney, but a court may award attorney's fees to prevailing parents. (Cal. Ed. Code, §§ 56502 and 56507; 20 U.S.C § 1415 (e)(4)(B); and *McSomebodies v. Burlingame Elementary School Dist.* (9th Cir. 1989) 897 F.2d 974.)

f. The Child's Placement Remains The Same During Administrative Review

The filing of a complaint preserves things as they are. If the dispute between the parents and the school district concerns the assessment or placement of the child, the assessment or placement cannot be carried out during the administrative review. If the dispute between the parents and the school district concerns the type of special education or related services needed by the child, the child's program must remain the same until the dispute is resolved. If the child was not in school at all, he or she must be allowed to enroll in a regular public school program during the administrative review. However, the parents and the school district can negotiate a temporary agreement about special education, related services, or placement. (20 U.S.C. § 1415 (e)(3).)

Parents have the final responsibility for the protection and education of their children. Although parents must send their children to school, parents need not leave their children in a school where they are denied the education they have a right to or the services they need. If the school district refuses to provide needed special education, needed related services, or an appropriate placement, then the parents can send their child to a school that does provide the appropriate education, services, or placement. The parents will be reimbursed for the cost of sending their child to the alternative school. However, if the hearing officer or the courts ultimately decide in favor of the school district, then the parents must pay for the school they choose. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, *cert. den.* 115 S.Ct. 428.)

2. Judicial Review

a. General

Any party dissatisfied with the hearing officer's decision can file a lawsuit. The lawsuit can be filed in either federal district court or California superior court. Generally, a parent or child must exhaust the administrative remedies available before filing a lawsuit. In other words, a parent must file a complaint with the Superintendent of Public Instruction

and use the hearing process before filing a lawsuit in federal or state court. (*Smith v. Robinson* (1984) 468 U.S. 992.) In some cases a court will hear the suit without use of the administrative process, but this is generally only allowed where the hearing would be futile (as where a child with a similar problem was already denied relief) or where the school district has failed in its statutory duty to inform the parents of the complaint procedures. (*Doe v. Maher* (9th Cir. 1986) 793 F.2d 1470.)

b. The Child's Placement During Judicial Review

If the hearing officer decides in favor of the parents of a disabled child, then the school district must immediately obey the hearing officer's order. Only a judge may permit the school district to disregard the hearing officer's decision.

Federal law gives parents the right to insist that their child remain wherever he or she was before the dispute arose, during both administrative and judicial review. This means that the school district may not change a child's status, program, services or placement over the parents' objections, even if the hearing officer decides in favor of the school district, unless a court issues an order to the contrary. (20 U.S.C. § 1415 (e)(3).)

If the hearing officer decides in favor of the school district and denies a child a type of program, service, or placement that the parents think the child needs, the parents can ask the judge for a preliminary injunction ordering the school district to provide what is needed. The parents can also arrange privately for the child to receive the educational program, services, or placement that he or she needs. If the parents ultimately prove that the hearing officer's decision was wrong, and that their child does need what the parents provided privately, the school district will be required to repay the parents their costs. (*Doe v. Brookline School Committee* (1st Cir. 1983) 722 F.2d 910.) Of course, if the judge ultimately decides that the hearing officer was right, then the parents must pay for the privately-arranged program, services, or placement themselves.

c. Court Proceedings

The trial judge makes an independent decision on the basis of both the hearing officer's decision and any additional evidence which is presented.

d. Available Remedies

The judge has the power to order "all appropriate relief." The judge can order the school district to provide a disabled child with a particular type of program, service or placement. The judge can authorize the school district to do an evaluation of a child. The judge can authorize the school district to place a disabled child in a particular program or school. Usually, "appropriate relief" means an order that applies to the future behavior of the school district and the parents. It may also mean ordering the school district to reimburse the parents the amount they have spent obtaining for their child a needed educational program or related service during the administrative and judicial review.

e. Counsel

Any party, including the school district, has a right to use a lawyer during the lawsuit. A Court may award parents attorney's fees if they are the prevailing party. (Cal. Ed. Code, § 56307.) The Superintendent of Public Instruction must provide parents with a list of persons who provide free or low-cost representation. (Cal. Ed. Code, § 56502 (c); 20 U.S.C. § 1415 (e)(4)(B).)

## II. PRESCHOOL EDUCATION

### A. Children Younger Than Five May Be Eligible For Special Education Benefits

Children who are younger than five years old and who, because of their disability, require special education may be eligible for education services. To be eligible for early education services, children must generally satisfy the same requirements as those used for older children. Physical, mental and emotional disabilities will entitle children to available services. Services may include assistance for parents in coordinating other services provided by agencies in the area, access to developmentally appropriate equipment and specialized materials, activities to aid in the child's development, and other general services. (See Cal. Ed. Code, §§ 56441.3 and 56441.11.)

California also provides for services for children two years and younger under the California Early Intervention Services Act. (Cal. Gov. Code, § 95000 et seq.) The purpose of this Act is to enhance development and minimize the potential for developmental delays by providing early intervention services for infants and toddlers who have disabilities or who are at risk of becoming disabled.

Eligibility for services is reserved for infants and toddlers with specific developmental delays, or conditions with harmful developmental consequences, or for children who are at high risk of acquiring a developmental disability. Specifically, infants or toddlers who have developmental delays in one of the following areas are eligible:

- (1) cognitive development;
- (2) physical and motor development (including vision and hearing);
- (3) communication development;
- (4) social or emotional development; and
- (5) adaptive development.

Infants or toddlers are also eligible where they have conditions of known etiology or conditions which have established harmful developmental consequences, or where they are at high risk of having substantial developmental disability due to a combination of biomedical risk factors. (Cal. Gov. Code, § 95014.)

For information on the services available, contact your local regional center. (See the services directory in the back of this handbook.) If your child has visual, hearing or orthopedic impairments, contact your local educational agency.

B. Eligible Preschool Children Have The Same Rights As School Age Children

Whenever a preschool age child is eligible for special education, both the child and the parents are entitled to all of the rights of disabled school-age children and their parents (discussed above).

III. POST-SECONDARY EDUCATION

A. General Law - Section 504

All post-secondary programs, including vocational programs, which receive federal financial assistance, are prohibited by Section 504 of the Rehabilitation Act from discriminating on the basis of disability. Section 504 provides that no qualified disabled individual shall be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. This section focuses on the impact of Section 504 on post-secondary education.

In general, it is unlawful to discriminate against an otherwise qualified disabled individual in any academic, research, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or any other post-secondary education program or activity which receives federal financial assistance. (29 U.S.C. § 794; 34 C.F.R. § 104 et seq..)

B. What Is A "Program Or Activity?"

Until 1988, court decisions limited the scope of Section 504 protection to the specific program or activity which received federal money. Thus, if a college received federal assistance only in the form of student financial aid (such as Guaranteed Student Loans and federal grants to students), then only the financial aid department of the college would have had to comply with Section 504, not the entire school. Legislation which broadened the scope of Section 504 was enacted in 1988. (29 U.S.C. § 794 (b).)

C. Nondiscrimination In Admissions, Recruitment, And Accommodation

A "qualified handicapped person" may not be denied admission or be subjected to discrimination in admissions or recruitment solely because of his or her handicap. Schools may not limit the number or proportion of disabled students, and may not use any admission tests which have a disproportionate, adverse effect on disabled applicants,

unless such tests are valid predictors of success in the specific program and alternative tests or criteria are not available. Admissions tests must accurately reflect the applicant's achievement level and not merely reflect his or her disability.

Admissions officers may not ask whether an applicant is disabled, unless it is clearly stated that the information is voluntary, will be kept confidential, and is being used solely in order to monitor the school's compliance with nondiscrimination laws.

A post-secondary education program which receives federal funds must modify its academic requirements, if necessary, to ensure that a disabled person is not discriminated against, and must provide "auxiliary aids" such as readers, interpreters, and adapted classroom equipment. However, educational programs do not need to modify requirements which are "essential" to the program. An "otherwise qualified" disabled individual has been interpreted to mean someone who meets all of a program's requirements, despite his or her disability. Thus, a nursing school, for example, may impose valid physical qualifications for admission to a clinical program; it need not waive important academic requirements or provide an interpreter so that a deaf person can participate in the program, when the ability to hear is validly deemed essential to successfully participate in the clinical program. (34 C.F.R. § 104 et seq.; *Southeastern Community College v. Davis* (1976) 442 U.S. 397.)

#### D. Nondiscrimination In Housing

If a school which receives federal assistance provides housing for non-disabled students, it must provide comparable, convenient, and accessible housing for disabled students at the same cost. In general, the number and variety of living accommodations available to disabled students must be comparable to that available to non-disabled students. (34 C.F.R. § 104.45.)

#### E. Nondiscrimination In Financial Aid

A school which receives federal assistance may not, on the basis of disability, provide less financial aid, limit eligibility for financial aid, or discriminate in any other way against disabled applicants and recipients of financial aid. (34 C.F.R. § 104.46.)

Special scholarships and awards which may discriminate are valid only if the overall effect of the award or scholarship is not discriminatory on the basis of disability. For example, it might not be considered discriminatory to deny a varsity football scholarship to an individual with a neurological disorder, but it would be discriminatory to deny a diving team scholarship to an individual solely because he or she is deaf. The decision must be based on comparative athletic ability, not on the absence or presence of a disability.

#### F. Nondiscrimination In Nonacademic Services

A recipient of federal assistance may not discriminate on the basis of disability in providing physical education courses and athletic programs, and must provide qualified disabled students an equal opportunity to participate. A school may only offer separate or

different physical education and athletic programs if they are not discriminatory and if qualified disabled students have the opportunity to participate in the regular programs.

Personal, academic or vocational counseling must be provided without discrimination on the basis of disability. It is discriminatory to counsel disabled students to pursue more restrictive career objectives than non-disabled students with similar interests and abilities. (34 C.F.R. § 104.47.)

## CHAPTER 6

### PARENTAL RIGHTS

#### I. PARENTAL FITNESS

Disabled people have the same right as anyone else to bear and raise children. A parent's or child's disability does not by itself indicate a need for intervention by child protective services. A parent's physical disability cannot be used as a basis to deny him or her child custody, unless the disability prevents the parent from exercising care and control. (Cal. Welf. & Inst. Code, §§ 300 (b) and 16509.2.)

For example, one California appellate court has held that termination of a developmentally disabled individual's parental rights required a showing by clear and convincing evidence that services designed especially for her needs had been tried without success, and that despite such services it could be shown that the child's best interests required that she be declared free for adoption. (*In re Victoria M.* (1989) 207 Cal.App.3d 1317.)

#### II. CHILD CUSTODY

In California, child custody decisions are made according to the best interests of the child. A person cannot be denied custody solely because he or she has a physical disability. A parent's health or physical condition may be considered in the custody decision, but cannot be presumed to affect the child negatively or to make the parent unfit to have custody. The special contributions a disabled parent may give to the child's development must be considered. A court may deny custody to a disabled parent only if the parent's condition will have a substantial and lasting negative effect on the child. (*In re Marriage of Carney* (1979) 24 Cal.3d 725.) A mentally disabled parent may be denied child custody only if suffering from a mental incapacity or disorder which renders him or her unable to care for and control the child adequately. (Cal. Fam. Code, § 7827.)

#### III. ADOPTION

Disabled people can adopt children. All adoptions are based on the best interests of the child. Although the health of a prospective parent is one of many factors in an adoption decision, a parent's disability cannot be the sole reason for denial. (*Adoption of Richardson* (1967) 251 Cal.App.2d 222.; Cal. Fam. Code, § 8612.)

Some laws encourage the adoption of disabled children. The Adoption Assistance Program provides assistance and financial aid to prospective adoptive parents of "hard-to-place" children. A hard-to-place child includes a child with physical, mental, emotional, or medical disabilities. (Cal. Welf. & Inst. Code, § 16120; Cal. Code Regs., tit. 22 § 35325 et seq.) An adopted disabled child who requires medical treatment may be eligible for care at no cost through the California Children's Services Program (described in Chapter 8), regardless of the income of the adoptive family. (Cal. Health & Saf. Code, § 270.) Expenses related to the adoption of a child with special needs may also be tax-deductible.

## CHAPTER 7

### PROGRAMS AND SERVICES

This section describes the following special services and programs for disabled people: In Home Supportive Services, rehabilitation services, Independent Living Centers, regional centers, and community mental health services. These programs are funded by state and federal governments and may be available without cost. Additionally, some private organizations may provide similar services.

#### I. IN HOME SUPPORTIVE SERVICES (IHSS)

In Home Supportive Services (IHSS) is a state-sponsored program whose purpose is to allow blind and disabled persons to live safely and independently in their homes. Any blind or disabled person eligible to receive MediCal or SSI is eligible to receive IHSS. Applications can be made through your county Department of Social Services.

IHSS pays the cost of supportive services for disabled persons who are unable to perform these services themselves and who could not safely remain in their homes without this help. Supportive services include cleaning, cooking, shopping, laundry, personal care and grooming, transportation to medical appointments, and protective supervision. In certain circumstances, a spouse or parent may be paid to provide supportive services.

Generally, an individual is limited to a certain maximum monthly amount of supportive services. However, a blind or disabled person in need of at least 20 hours per week of the type of care specified below may receive a higher rate of payment. The types of care which allow higher payment are:

- routine bodily functions, such as bowel and bladder care and respiration assistance;
- dressing, oral hygiene, and grooming;
- preparation and consumption of food and meal cleanup for individuals who require assistance with the preparation and consumption of food;

- moving into and out of bed, other assistance in transferring, turning in bed, and other repositioning;
- bathing, routine bed baths, and washing;
- ambulation and care and assistance with prostheses;
- rubbing of skin to promote circulation;
- paramedical services (for example, giving injections or suctioning a tracheotomy); and/or
- any other function of daily living as determined by the Director of Social Services.

Decisions regarding IHSS may be appealed within 90 days to the Department of Social Services. (Cal. Welf. & Inst. Code, § 12300 et seq..)

## II. REHABILITATION SERVICES

Congress has established federal and state-funded vocational training programs designed to increase the employment of disabled people. The Department of Rehabilitation is the state agency in California charged with the development and supervision of services necessary to achieve this goal.

### A. Eligibility For Services

Vocational rehabilitation services are available to any mentally or physically disabled individual who is of employable age and who can benefit from rehabilitation services. A disabled person is defined here as someone with a mental or physical disability which creates a barrier to employment. Financial need may be taken into account when a determination of eligibility is made for these services. (Cal. Welf. & Inst. Code, §§ 19151 and 19018.)

### B. What Vocational Rehabilitation Services Are

- evaluation of rehabilitation potential;
- counseling, guidance, and placement services;
- training services, including books and other training materials;
- reader services for the blind and interpretive services for the deaf;
- recruitment and training services to provide disabled people with new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate service employment;



- certain corrective surgery;
- transportation related to vocational rehabilitation services;
- services to the families of disabled individuals which will contribute substantially to the rehabilitation of disabled clients; and
- other services related to rehabilitation.

(Cal. Welf. & Inst. Code, § 19150.)

#### C. Application Procedures

Applications for vocational rehabilitation services can be made to the Department of Rehabilitation. A list of offices throughout the state is included in the Directory of Services.

#### D. The Rehabilitation Appeal Process

If you have applied for services and have been found to be ineligible, or have had services discontinued, you may appeal the action to supervisory staff within the Department. You may also have your case heard before the Rehabilitation Appeals Board. A request for review must be filed within one year of the action. (Cal. Welf. & Inst. Code, § 19704; 29 U.S.C. §§ 720 et seq..)

### III. INDEPENDENT LIVING CENTERS

Independent Living Centers are designed to assist disabled people in living fuller and freer lives outside institutions. Independent Living Centers are private, non-profit organizations controlled by a board of directors. A majority of the board must be comprised of disabled people. The Department of Rehabilitation has responsibility for planning, developing, and funding Independent Living Centers.

The staff of these centers is trained to assist disabled people in achieving economic and social independence. The staff is composed of disabled people, whenever practicable. Services provided by Independent Living Centers include peer counseling, advocacy, attendant referral, housing assistance, and information and referral. Other services, such as transportation, job development, equipment maintenance, training in independent living skills, and mobility and communication assistance may also be available. (Cal. Welf. & Inst. Code, § 19801.) A list of Independent Living Centers located throughout California is included in the Directory of Services at the end of this handbook.

### IV. REGIONAL CENTERS

Regional centers provide services for developmentally disabled people. For purposes of regional center eligibility, a developmental disability is one which begins before an individual is 18 years old, is expected to continue indefinitely, and is considered a substantial handicap. Individuals with developmental disabilities, persons believed to have

a high risk of parenting a child with a developmental disability and infants with a high risk of becoming developmentally disabled, are all eligible for services. Mental retardation, cerebral palsy, epilepsy, and autism are all considered developmental disabilities. (Cal. Welf. & Inst. Code, § 4642.) Applications for services can be made at a local regional center. A list of regional centers is located in the Directory of Services.

A. Regional Center Services

Regional centers are required to do community outreach to identify and notify people eligible for services. The centers conduct an initial interview with a potential client and make a complete needs assessment within 60 days based on the applicant's history, professional evaluations and the results of standardized tests. (Cal. Welf. & Inst. Code, § 4643.)

Some centers provide services for couples at risk of parenting a developmentally disabled infant or for an infant at risk of becoming developmentally disabled. Regional centers also provide placement and follow-up support services to developmentally disabled people in licensed community care facilities or out-of-home residential facilities. If feasible, residential care will be provided within the region where the individual lives. (Cal. Welf. & Inst. Code, §§ 4642 and 4648.)

Generally, regional centers work closely with other state agencies to advocate on behalf of developmentally disabled people, to educate and inform the public, and to ensure that legal and civil rights are enforced.

B. Individual Program Plans

A regional center is required to develop an "individual program plan" (IPP) for any person who is eligible for services. The plan is prepared jointly by regional center staff, the eligible individual, and if appropriate, the individual's parent or guardian. The IPP includes:

- an assessment of the person's capabilities and problems;
- objectives for improving capabilities and resolving problems, and a time period in which these objects will be reached;
- a list of necessary services and service providers; and
- periodic review to determine if services have been provided and objectives achieved, and to make changes in the plan when necessary.

(Cal. Welf.& Inst. Code, § 4646.)

C. The Regional Center Appeal Procedure

A recipient of regional center services who believes a decision or action of the center is illegal, discriminatory, or not in his or her best interest can file an appeal. The regional

center is required to assist the recipient in the appeal process. The applicant or recipient must request a hearing within 30 days of notice of the regional center's decision. (Cal. Welf. & Inst. Code, § 4640 et seq..)

## V. COMMUNITY MENTAL HEALTH SERVICES

Some services for mentally disabled individuals are provided through county community mental health programs. Every county must adopt a plan for community mental health services. To receive services, an individual should contact the community mental health service in the county where he or she resides.

Community mental health services include programs for people who are institutionalized because of mental disabilities, outpatient mental health services, and preventive programs. Each community mental health program has a citizens advisory board composed of people representing the public interest in mental health, people or families of people receiving mental health services, and mental health professionals. (Cal. Welf. & Inst. Code, § 5600 et seq..)

# CHAPTER 8

## BENEFITS

Both federal and state governments fund a number of benefit programs which are designed to assist persons with disabilities. The following section describes some income benefits and certain tax and business benefits. The section does not address specific benefit programs for disabled veterans. If you have served in the military you should contact the Veterans' Administration or a veterans' organization to determine if you are eligible for benefits. This section also does not describe assistance programs, such as Aid to Families with Dependent Children (AFDC), which do not directly relate to disabled persons. Health benefits are discussed in the "Health Care" chapter of this book (Chapter 9).

### I. INCOME BENEFITS

#### A. Social Security Disability Insurance and Supplemental Security Income (SSI)

Social Security Disability Insurance and SSI provide monthly income benefits for blind or disabled persons. Both programs are administered by the Social Security Administration (SSA). While the eligibility requirements differ for each program, the definitions, regulations, and application procedures are similar. Some of the more important aspects of these programs are described below. (42 U.S.C. § 401 et seq.; 42 U.S.C. § 1381 et seq..)

##### 1. Eligibility For Social Security Disability Insurance

To be eligible for Social Security disability benefits, an individual must be blind or disabled, have been employed for a required length of time, and have had Social Security taxes withheld from his or her paycheck. The amount of monthly benefits is based on previous earnings and varies between individual recipients. Benefits may be granted to the individual's family as well. A five-month waiting period is required between the onset of disability and the time that disability benefits can be received. (20 C.F.R. § 404.315.)

Some older disabled widows or widowers may also be eligible for social security disability benefits without having been employed. (20 C.F.R. § 404.336.) A child who becomes disabled before the age of 22 may receive social security disability benefits if his or her parent is entitled to social security old-age or disability benefits, or if the child's parent is deceased and was fully insured under the social security system. The child must be dependent on the insured for support. (20 C.F.R. § 404.350.)<sup>16/</sup>

## 2. Eligibility for SSI

A blind or disabled person who has no source of income or a low income and whose other financial resources, such as savings, are limited may qualify for SSI. (20 C.F.R. § 416.202.) A disabled child under age 18 may receive SSI benefits if his or her parent(s)' income is within the SSI limitations. A child is entitled to SSI benefits if his impairment is as severe as one that would prevent an adult from working. (*Sullivan v. Zebley* (1990) 493 U.S. 521.)

It is not necessary to have worked or paid social security taxes to qualify for SSI.<sup>17/</sup> However, individuals must apply for any other benefits such as pensions, worker's compensation, social security disability, or veteran's allowances to which they may be entitled before becoming eligible for SSI. There is no waiting period for SSI benefits. (20 C.F.R. § 416.210.)

## 3. Application Procedures

To apply for social security disability or SSI benefits, an individual or his or her representative must file an application with the local SSA office. An individual must furnish medical and other evidence of disability as part of the application process. (20 C.F.R. §§ 416.301 et seq., 416.202 et seq. and 416.601 et seq.)

## 4. Determining Disability

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16. The recently enacted Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193), tightens restrictions on children's eligibility for SSI disability benefits.

17. PL 104-193 prohibits noncitizens who are not U.S. military veterans or have not worked and paid taxes in America for at least 10 years from any SSI benefits.

To receive either disability or SSI benefits, an individual must show that he or she is unable to work because of blindness or disability. "Blindness" is defined as visual acuity of 20/200 or less in the better eye with use of a correcting lens. "Disability" is defined in terms of an inability to engage in any "substantial gainful activity." "Substantial gainful activity" means significant and productive physical or mental duties done or intended to be done for pay. Household tasks, hobbies, therapy, school attendance, and social activities are not generally considered substantial gainful activity. A person may still have some earnings (generally under \$300 a month) and not be considered engaged in substantial gainful activity. If an individual's disability is merely temporary and is not expected to last 12 months, he or she cannot receive social security disability or SSI benefits. (20 C.F.R. §§ 404.1501 et seq. and 416.971 et seq..)

Certain disabilities are considered severe enough to qualify a person for social security disability or SSI benefits automatically. Among these are kidney failure requiring dialysis, an IQ score of 59 or below, diabetes mellitus with nerve damage, mental diseases resulting in impairment of intellectual functioning and restriction of daily activities, and some types of cancer. (20 C.F.R. §§ 404.1520, et seq..)

Individuals will not be considered disabled merely because they are no longer able to perform their previous job. A person must be unable to do any other type of work, taking into consideration age, education, and work experience. The SSA uses standardized medical-vocational guidelines to determine what work the applicant should be able to perform if an individual's disability is "exertional" -- for example, affecting the ability to walk, stand, or lift. For "nonexertional" disabilities -- for example, difficulty with communication, understanding, or handling stress -- the determination is not standardized. The SSA does not consider whether the work which an individual could perform exists in the immediate area in which the individual lives, whether a specific job vacancy exists for the person, or whether the individual would be hired if he or she applied for work. (20 C.F.R. § 404.1520.)

#### 5. Referral to Rehabilitation Services

Individuals receiving social security disability benefits and SSI may be referred to the state agency providing rehabilitation services. In California, the designated state agency is the Department of Rehabilitation. If a person refuses without "good cause" to accept rehabilitation services, eligibility for SSI or the amount received for social security disability will be affected. (20 C.F.R. § 416.213.)

#### 6. The Appeal Process

If you are denied disability or SSI benefits you may appeal. To initiate the appeal process, you must file a "request for reconsideration" with the Social Security Administration within 60 days of receiving notice of the denial of disability or SSI benefits. If you remain dissatisfied after the appeal process is exhausted, you may file a lawsuit in federal court. (20 C.F.R. § 404.900 et seq..)

#### 7. Review and Termination of Disability Benefits

Eligibility for disability and SSI benefits is reviewed periodically. A recipient's disability or SSI benefits cannot be terminated unless there is a finding that the physical or mental impairment upon which the benefits were based has ceased, does not exist, or is not disabling. A decision to terminate benefits must be supported by substantial medical evidence. You may appeal a decision to terminate benefits, and will continue to receive disability benefits during the appeal process. (20 C.F.R. § 416.988 et seq.)

## B. State Disability Insurance

California has a disability insurance program, which can be administered either by the state or by an employer, to protect against loss of wages by disabled workers. Nearly all workers are covered by this program. Benefits vary among individuals and depend on the amount of previous earnings. Benefits can be received for up to a year.

### 1. Eligibility For State Disability Insurance

To be eligible for state disability insurance, an individual must be unable to perform "regular or customary work" because of either an illness or injury. The illness or injury does not have to be work-related. A worker must have received \$300 in wages in the year prior to the onset of the disability. (Cal. Unemp. Ins. Code, § 2652.)

### 2. Application Procedures

To apply for state disability insurance, you should file a claim with your local Employment Development Department. Forms should be filed promptly, and cannot be filed later than the 41st day after the disability begins. You may appeal a denial of disability insurance benefits within 20 days. (Cal. Unemp. Ins. Code, §§ 2706.1, 2707.4.)

## C. Worker's Compensation

The workers' compensation program requires an employer to pay his or her employees for all injuries which occur in the course of employment. Injury includes an accident, disease, or emotional disorder arising out of the employment, including injuries to artificial limbs, hearing aids, and metal braces. However, damage to hearing aids or eyeglasses which causes no disability is not compensated.

An employee with a previous permanent disability or physical impairment who is later permanently injured at work will be compensated only for the second injury when considered by itself. For example, if a person is blind in one eye and later loses the sight in the other eye as a result of a work-related injury, he or she is compensated only for the loss of one eye and is not compensated for being totally blind. (Cal. Lab. Code, § 4750; *Wolski v. Industrial Accident Comm.* (1945) 70 Cal.App.2d 427.)

To receive workers' compensation benefits, you must generally notify your employer of your injury within 30 days. (Cal. Lab. Code, §§ 5400, 5405.) A claim for compensation must be filed within one year from the date of injury.

## D. General Assistance

Persons with little or no income who do not receive SSI or Aid To Families With Dependent Children (AFDC)<sup>18/</sup> may be eligible for General Assistance. Each county sets its own rate of General Assistance. Applications can be made at your county office of the Department of Social Services.

E. Food Stamps

Low-income individuals may be eligible to receive food stamps. The food stamp program issues coupons which can be used to purchase food. In California, SSI recipients are not eligible for food stamps because the SSI payment already includes the value of the food stamp allotment. Food stamp applications can be made at your county Department of Social Services.<sup>19/</sup>

F. Special Needs Allowance For  
Blind Persons With Guide Dogs

Blind people who own guide dogs and who receive SSI are entitled to a monthly special needs allowance of \$50 to help with the purchase of dog food. (Cal. Welf. & Inst. Code, § 12553.) Applications are available by mail through your county Department of Social Services.

G. Decreased Energy Rates

Disabled people who rely on life-support equipment in their homes are entitled to an increase in the amount of gas and electricity payable at lower baseline rates. Life-support equipment includes all types of respirators, iron lungs, hemodialysis machines, suction machines, electric nerve simulators, pressure pads and pumps, aerosol tents, electrostatic and ultrasonic nebulizers, compressors, and motorized wheelchairs. People who are paraplegic or quadriplegic or who have multiple sclerosis are also entitled to these lower utility rates. (Cal. Pub. Util. Code, § 739.)

I. TAX AND BUSINESS BENEFITS

A. Tax Benefits

Several state and federal income tax provisions may benefit disabled persons. The following credits or deductions may be allowable:

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18. PL 104-193 replaces AFDC with block grants to states, which would run their own programs, setting eligibility requirements and benefit levels. PL 104-193 sets a lifetime limit of five years for welfare payments to any family and requires that adults work within two years of receiving federal welfare payments.

19. PL 104-193 prohibits non citizens who are not U.S. military veterans or who have not worked and paid taxes in America for at least 10 years from any food stamp benefits.

- an additional exemption for blind persons;
- deductions for the cost of purchase and maintenance of wheelchairs, guide dogs, signal dogs, and other necessary equipment, medical treatment, and prescription drugs;
- deductions for the cost of attendance at special schools for mentally or physically disabled children;
- a tax credit for the cost of caring for a disabled spouse or child while the taxpayer is working;
- a tax credit for persons retired on disability;
- deductions for the cost of repairing or remodeling a building or a transportation vehicle in order to increase access by disabled people; and
- deductions for expenses related to the adoption of a disabled child.

Tax laws are complex and change from year to year. To take advantage of these laws, further assistance may be necessary. Information can be obtained from the federal Internal Revenue Service or the California Franchise Tax Board.

## B. Property And Sales Tax Benefits

### 1. Property Tax and Renter's Assistance

Low-income blind or disabled home owners may be eligible for assistance with the payment of property taxes. A low income blind or disabled renter may qualify for similar assistance with rent payments. Applications for this assistance can be made each year with the Franchise Tax Board. (Cal. Rev. & Tax Code, § 20501 et seq..)

### 2. Property Tax Postponement

A low-income blind or disabled home owner may be able to defer payment of property taxes due on his or her residence or mobile home. The deferred taxes become a lien on the property and are payable when the owner or co-owner spouse dies, sells or conveys the residence, or stops using the property as his or her residence. Applications for postponement should be filed with the state Controller. (Cal. Rev. & Tax Code, § 20581 et seq..)

### 3. Sales Tax Benefits

California law exempts from sales tax obligations a variety of purchases related to prescribed medications, hemodialysis products, wheelchairs and related parts, oxygen equipment, and parts used to modify a vehicle for use by the physically disabled. A



prescription or other physician's documentation must normally be presented at the time of purchase. (Cal. Rev. & Tax Code, § 6369 et seq..)

C. Business Loans To Disabled Persons

The Small Business Administration may make business loans to assist disabled persons when no other financial assistance is available on reasonable terms.

Disabled persons who wish to establish, acquire, or operate a small business may be eligible for these loans. Any public or private organization operated in the interest of disabled persons and which employs disabled persons may also be eligible. Contact the Small Business Administration for more information. (15 U.S.C. § 636 (h).)

D. Business Enterprises For The Blind

Blind people who are licensed to operate vending facilities have priority to operate such facilities on any property owned, leased, rented, or otherwise controlled by any state or federal agency or department. (20 U.S.C. § 107; Cal. Welf. & Inst. Code, § 19625 et seq..)

## CHAPTER 9

### HEALTH CARE

The following section summarizes California and federal law concerning health care benefits, the right to medical treatment, consent to medical care, and sterilization of disabled persons.

I. HEALTH CARE BENEFITS

A. Medicare

Medicare is a government-sponsored program of health insurance. An individual who has been receiving social security disability benefits for 24 months is entitled to Medicare. Applications for Medicare can be made at a local Social Security office.

Medicare consists of two parts. Part A provides hospital insurance benefits which pay part of the cost of hospital care, related post-hospital care, home health services, and hospice care. Part B provides medical insurance which pays for part of the cost of physician fees and outpatient medical services. Unlike Part A, Part B is a voluntary plan which must be paid for by the insured individual. Special Medicare eligibility

requirements exist for persons receiving treatment for end stage renal disease. Some private health insurers or group health plans may provide supplemental coverage for Part A or B or both. (42 U.S.C. §§ 426 et seq. and 1395 et seq..)

## B. MediCal

MediCal is a state and federal-sponsored program to pay for medical care for low income individuals. It is the California version of the Medicaid program and is partially federally-funded. Application for MediCal can be made at your county Department of Social Services. (42 U.S.C. § 1396 et seq.; 42 C.F.R. § 430 et seq. and Cal. Welf. & Inst. Code, § 14000 et seq..)

### 1. Eligibility For MediCal

A person receiving SSI or AFDC automatically receives MediCal benefits. Certain "medically needy" individuals may also be eligible for MediCal. A "medically needy" person is a blind or disabled person whose income is too high to qualify for public assistance but insufficient to provide for the costs of health care. A medically needy person may have to pay a monthly share of costs before receiving MediCal services. (Cal. Welf. & Inst. Code, §§ 14005.7 and 14051; Cal. Code Regs., tit. 22 § 50001, et seq..)

A person may own a house which is used as his or her principal residence and still be eligible for MediCal. However, under certain circumstances, the state may seek to recover the cost of certain medical services rendered to a recipient after he/she is deceased by filing a claim against that person's estate. (42 U.S.C. § 1396p (a); Cal. Welf. & Inst. Code, § 14009.5.)

### 2. What MediCal Covers

MediCal is a comprehensive program which pays for both hospitalization and outpatient medical services and treatment. It includes coverage of the cost of nursing home care, x-rays, certain prescription medications, emergency and essential dental services, certain medical transportation, home health services, eyeglasses, hearing aids, orthopedic devices, durable medical treatment and supplies, adult day health care, pregnancy-related care, and mental health services. Also included are heart and liver transplants and bone marrow transplants for treatment of cancer. (Cal. Welf. & Inst. Code, § 14132 et seq..)

Not all physicians or health care facilities accept MediCal. Only certain hospitals can accept routine MediCal patients. However, a MediCal recipient can be treated at any hospital when there is a life-threatening emergency situation, when the MediCal patient also receives Medicare, or when the MediCal recipient lives an excessive distance from a hospital which usually accepts MediCal patients. Many MediCal services will not be paid for unless the health care provider obtains prior approval from MediCal officials (called "Prior Authorization"). (Cal. Welf. & Inst. Code, § 14000 et seq..)

### 3. The MediCal Appeal Process

A denial or termination of MediCal benefits can be appealed within 90 days.

C. Hill-Burton Hospitals

The Hill-Burton Act provides public funds for hospital construction. Each hospital which accepts Hill-Burton money is required by law to give a reasonable amount of care at no cost or low cost to persons unable to pay for hospital services. The hospital must post signs in the admissions office, emergency room, and business office identifying itself as a Hill-Burton facility. The hospital business office should assist people in applying for care at reduced rates. (42 U.S.C. § 291 et seq.; 42 C.F.R. § 53.111 et seq..)

D. California Children's Services (CCS)

The California Children's Services (CCS) program assists the parents of physically disabled children under the age of 21 who are unable to pay for the cost of their child's medical treatment. Eligibility for the program is determined by the family's income and by the cost of care for the disabled child. Parents may have to pay a share of the cost of medical treatment. Services include screening of newborn infants at high risk for deafness and payment for bone marrow transplants under certain conditions. Applications can be made at the CCS office in the county where the child resides. (Cal. Health & Saf. Code, § 123800 et seq..)

E. Genetically Handicapped Person's Program

The Genetically Handicapped Person's Program provides medical and social support services to children and adults with genetically-handicapping conditions, such as cystic fibrosis, hemophilia, sickle cell disease, and Huntington's disease. The program is administered by the State Department of Health Services. Services include diagnostic evaluation, cost of blood transfusions, rehabilitation services, medical treatment, physical and speech therapy, appliances, transportation, respite care, and genetic and psychological counseling.

Eligibility for the program is based on the family's adjusted gross income. An individual will generally not receive services under the program if he or she is entitled to similar benefits under any other private, state, or federal insurance program. Persons who can no longer receive services and assistance under the California Children's Services program because they have attained the age of 21 may be eligible for this program. (Cal. Health & Saf. Code, § 125125 et seq..)

II. RIGHT TO MEDICAL TREATMENT

People with mental or developmental disabilities have a right to prompt medical care and treatment. (Cal. Welf. & Inst. Code, §§ 4502(d) and 5325.1(d).) Health care professionals, such as physicians, social workers, psychologists, physical therapists, and nurses licensed by the state, are subject to disciplinary action if they discriminate against people who are physically disabled. The State Department of Consumer Affairs regulates licensed professionals, and complaints concerning discriminatory practices should be made to the board or commission within the Department of Consumer Affairs which regulates the particular profession.

Physicians who intentionally violate any rights of involuntarily confined people with mental disabilities are engaging in unprofessional conduct and are subject to disciplinary proceedings. Complaints can be filed with the Division of Medical Quality of the Board of Medical Quality Assurance. (Cal. Bus. & Prof. Code, §§ 100 et seq.) (See Chapter 10 for more information on the rights of people with mental and developmental disabilities.)

A. Medical Care For Disabled Newborns

The Federal Child Abuse Amendments of 1984 address the withholding of medical treatment from disabled infants. The amendments attempt to ensure that decisions about medical treatment for handicapped infants are not made on the basis of subjective opinions concerning the future "quality of life" of a retarded or disabled person. (42 U.S.C. § 5101 et seq.; 45 U.S.C. § 1340 et seq.)

The amendments set certain requirements for states which wish to receive federal money. To receive federal money, state Child Protective Service (CPS) agencies must enact a system of responding to reports of medical neglect. (State CPS agencies are already responsible for responding to reports of child abuse and neglect.) "Medical neglect" means the withholding of medically indicated treatment from disabled infants with life-threatening conditions. "Withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment which, in the physician's reasonable medical judgment, would be effective in helping or correcting all such conditions. (See 42 U.S.C. § 5106a; *American Academy of Pediatrics v. Heckler* (D.D.C. 1983) 561 F.Supp. 395; *United States v. University Hospital* (2nd Cir. 1984) 729 F.2d 144; and *Bowen v. American Hospital Assn.* (1986) 476 U.S. 610.)

Treatment may only be withheld when:

- the infant is chronically and irreversibly comatose; or
- the provision of treatment would merely prolong dying or not be effective in treating the infant's life-threatening conditions, or would be futile in saving the infant; or
- the treatment itself would be inhumane.

Even when treatment may be withheld, appropriate food, water, and medicine must be provided. (42 U.S.C. § 5106; 45 C.F.R. § 1340.15.)

The state is required to have programs or procedures to place a medically-neglected infant within protective service. The procedures must provide for an investigation of the infant's condition and a court order for an independent medical examination, if necessary. (42 U.S.C. § 5106a; 29 U.S.C. § 701 et seq. and 45 C.F.R. § 84.55(c).)

B. Infant Care Review Committees

Infant Care Review Committees (ICRC) are composed of hospital personnel, community members, and disability organization representatives. They provide education for health care professionals and families of disabled infants with life-threatening conditions, recommend guidelines and policies concerning withholding medically-indicated treatment, and offer counsel in cases involving infants with life-threatening conditions. The federal government has issued model guidelines to assist hospitals in developing ICRC. (45 C.F.R. § 84.55(a).)

III. RIGHT TO CONSENT TO MEDICAL TREATMENT

Physically or mentally disabled persons have a right to consent or refuse to consent to any medical treatment, except in an emergency or where a conservator or court has authorized treatment. If a person is incapable of giving consent or refusing consent (such as a child or a person in a coma), and the person has no legal guardian or conservator, a family member may be able to give consent. Consent in these cases may also be obtained through court proceedings. In any court proceeding brought to authorize medical treatment, a person must be given proper notice and the opportunity to be represented by an attorney. (Cal. Prob. Code, § 3200 et seq.)

A. Right Of A Conservatee To Refuse Medical Treatment

A person for whom a guardian ("conservator") has been appointed may still be able to refuse medical treatment. The person ("conservatee") loses the right to refuse only if the court determines that the conservatee lacks capacity. A conservator may consent to medical treatment on behalf of the conservatee in an emergency or in certain cases of severe illness or injury requiring immediate care. If the court determines that the conservatee lacks capacity to give consent, the conservator has the exclusive authority to consent to medical treatment for the conservatee. A conservator appointed under the Lanterman-Petris-Short (LPS) Act, discussed in Chapter 10, may have some additional power to authorize treatment.

No surgery can be performed on a conservatee without his or her prior consent, except where the conservatee faces loss of life or serious bodily injury, or a court order authorizes the surgery. (Cal. Prob. Code, § 2354 et seq.; Cal. Welf. & Inst. Code, § 5357 et seq.; 58 Ops.Cal.Atty.Gen. 849 (1975).)

B. Durable Power Of Attorney For Health Care

In California, individuals can sign a Durable Power of Attorney for Health Care. It allows the person, called the "principal," to choose an individual, called the "attorney in fact", who has the power to make health care decisions on behalf of the principal if the principal is unable to consent to or refuse medical treatment. Because of the broad legal powers conferred upon the attorney in fact, an individual should carefully consider and review all provisions of the durable power of attorney for health care or consult with an attorney before executing a power of attorney. (See Prob. Code § 4650, et seq.)

### C. Limited Right to Die

The United States Supreme Court ruled that competent persons have a constitutional right to refuse heroic medical treatment, although a state may require clear and convincing proof of that patient's intent before allowing life-support systems to be removed. (*Cruzon v. Director, Missouri Depart. of Health* (1990) 497 U.S. 261; see also *Thor v. Superior Court* (1993) 5 Cal.4th 725 (a competent informed adult has a fundamental right of self-determination to refuse or demand the withdrawal of medical treatment in any form, irrespective of the personal consequences.) The United States Supreme Court in October, 1996 granted a petition for certiorari in two cases challenging the constitutionality of state statutes which have criminalized the act of assisting persons to commit suicide. (See *Vacco v. Quill*, 95-1858 and *Washington v. Glucksberg*, 96-110.)

### D. Sterilization Of Disabled People

Sterilization is a medical procedure which makes a person permanently unable to have children. Both men and women can be sterilized. Voluntary sterilization is legal in California with the individual's full knowledge and consent. Disabled people who are able to give consent to medical treatment may not be sterilized without their consent.

Developmentally disabled people who are unable to give consent may be sterilized only by court order. Before a court can order sterilization, a hearing must be held. The developmentally disabled person must be represented at this hearing by a lawyer. Sterilization will only be permitted if necessary to maximize the person's development and quality of life and if no other less drastic means of birth control are available. (*Conservatorship of Valerie N.* (1985) 40 Cal.3d 143.)

## CHAPTER 10

### CIVIL RIGHTS OF PERSONS WITH MENTAL AND DEVELOPMENTAL DISABILITIES

#### I. CIVIL RIGHTS OF PERSONS WITH DEVELOPMENTAL DISABILITIES

##### A. Federal And State Rights

In 1975, Congress enacted the Developmental Disabilities Assistance and Bill of Rights Act, which provides funding for programs and expresses the federal goal of legal and human rights for people with developmental disabilities. (42 U.S.C. § 6000 et seq.)

The Act defines developmental disability as a severe, chronic disability of a person which:

- is attributable to a mental or physical impairment or combination of mental and physical impairments;
- manifests itself before age 22;
- is likely to continue indefinitely;
- results in substantial functional limitations in three or more of the following areas of activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and
- reflects the person's need for special treatment or services throughout life.

(42 U.S.C. § 6001.)

The "Bill of Rights" section of the Act states that it is the government's policy to encourage states to provide appropriate treatment, services and habilitation to people with developmental disabilities. ("Habilitation" means the education, treatment and care required by developmentally disabled people to achieve their maximum development.) Treatment should maximize the developmental potential of an individual and should be provided in the least restrictive setting possible. (42 U.S.C. § 6000.)

California law similarly protects the constitutional rights of people with developmental disabilities, including the right to habilitation and the right to be free from hazardous procedures, unnecessary physical restraint, isolation, excessive medication, abuse or neglect. (Cal. Welf. & Inst. Code, § 4500 et seq..)

#### B. Institutionalization Of Developmentally Disabled Persons

In California, the presence of a developmental disability alone cannot justify commitment to an institution; an adult with a developmental disability has a legal right to make choices, including with whom and where he or she will live. (Cal. Welf. & Inst. Code, § 4502.) A person who has a developmental disability may be involuntarily placed in an institution only if he or she is a danger to himself or herself, or to others, and if evidence of such danger is proven in court. (Cal. Welf. & Inst. Code, § 6500.)

A person may be judicially committed to an institution only after court proceedings. At these proceedings, a person has a right to representation by an attorney and a right to a jury trial. If a person is judicially committed, the commitment order expires after one year unless further court proceedings are started. (Cal. Welf. & Inst. Code, § 6500.) A person must be judicially committed to the least restrictive residential setting necessary to achieve the purposes of treatment. (Cal. Welf. & Inst. Code, § 4502(a).)

A person may be voluntarily placed in an institution only upon referral from a regional center. A developmentally disabled adult placed in a state hospital at the request of a family member is not considered a voluntary admittee merely because the person neither protests nor knowingly agrees to the placement. A person must give a knowing and intelligent waiver of rights or participate in a judicial hearing with representation by counsel.

In 1981, the California Supreme Court ruled that persons with developmental disabilities who are unable to provide informed consent regarding their placement in a state developmental center are entitled to a judicial review regarding the need for, and appropriateness of their placement. (*In re Hop* (1981) 29 Cal.3d 82.)

#### C. Rights Of Developmentally Disabled Persons in Institutions

Federal law guarantees that developmentally disabled people placed in institutions have a right to safety, to freedom from bodily restraint, and to reasonable training necessary to protect those interests. (42 U.S.C. § 6000 et seq.; *Youngberg v. Romeo* (1982) 457 U.S. 307.) In California, residents of state hospitals or community care facilities also have the following rights:

- to treatment and habilitation services and support in the least restrictive environment;
- to wear their own clothes, to keep and use personal possessions, and to spend a reasonable sum of money for small purchases;
- to have access to individual storage space for private use;
- to see visitors each day;
- to have reasonable access to telephones;
- to receive and send mail and to have access to letter-writing materials and stamps;
- to refuse electroconvulsive (electroshock) therapy;
- to refuse behavior modification techniques which cause pain or trauma;
- to refuse psychosurgery; and



- to make choices in areas including, but not limited to, their daily living routines, choice of companions, leisure and social activities, and program planning and implementation.

These rights must be prominently posted in both English and Spanish. A resident can only be denied these rights for good cause. (Cal. Welf. & Inst. Code, § 4503 et seq.)

#### D. Judicial Hearing To End Institutionalization

Any developmentally disabled adult who has been admitted or committed to a state hospital or community care facility has a right to a judicial hearing in order to obtain release from the facility. A request for release may be made to any staff member of the state hospital, community care facility, or to any employee of a regional center. This individual must notify the court of the request for release. (Cal. Welf. & Inst. Code, § 4800.)

Generally, judicial review takes place in a superior court in the county where the facility is located. A person seeking release has a right to an attorney. If a person does not have an attorney, the court will appoint one. (Cal. Welf. & Inst. Code, § 4800 et seq.)

## II. CIVIL RIGHTS OF PERSONS WITH MENTAL DISABILITIES

#### A. The Lanterman-Petris-Short (LPS) Act

In 1967, the California Legislature passed the Lanterman-Petris-Short (LPS) Act, which was designed to define and protect the rights of people with mental disabilities, clarify commitment and conservatorship proceedings, and provide a means for enforcing these rights. (Cal. Welf. & Inst. Code, § 5000 et seq.)

#### B. Rights Of Persons With Mental Disabilities

Mentally ill individuals cannot be confined involuntarily if they are not dangerous and can live safely on their own. (*O'Connor v. Donaldson* (1975) 422 U.S. 563.) The United States Supreme Court has held that a person who was confined to a state mental institution against his will and without a hearing could sue state officials in federal court under 42 U.S.C. § 1983. (*Zinernon v. Burch* (1990) 494 U.S. 113.) In California, people with mental illnesses have the same legal rights as all other people. (Cal. Welf. & Inst. Code, § 5325 et seq.; *Foy v. Greenblott* (1983) 141 Cal.App.3d 1.) No one who has been involuntarily detained for evaluation or treatment, or who resides voluntarily in a treatment facility, can be excluded from participation in, denied the benefits of, or subjected to discrimination under any publicly-funded program or activity. Additionally, mentally disabled people have a right to treatment in the least restrictive setting possible which promotes the ability of the person to function independently, and a right to be free from hazardous procedures, unnecessary or excessive physical restraint or medication, abuse, or neglect. Medication cannot be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with treatment. (Cal. Welf. & Inst. Code, § 5325 et seq.; *Mills v. Rogers* (1982) 457 U.S. 291.)

Mentally disabled people residing either voluntarily or involuntarily in health care facilities also have the right to:

- wear their own clothing, keep and use their personal possessions, and keep and be allowed to spend a reasonable sum of money for small purchases;
- have access to individual storage space for private use;
- see visitors each day;
- have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them;
- have access to letter-writing materials, including stamps, and to mail, and to receive unopened correspondence;
- refuse convulsive treatment (convulsive treatments include electroshock therapy and insulin coma treatment);
- refuse psychosurgery; and
- see and receive the services of a patient advocate.

In California, a patient voluntarily admitted to a treatment facility may refuse anti-psychotic medication. These rights must be prominently posted in the languages predominant in the community. Each patient must, upon admission to the facility, be given a copy of a patient's rights handbook prepared by the state Department of Mental Health. (Cal. Welf. & Inst. Code, § 5325.)

### C. Commitment Procedures

A police officer may take into custody and detain upon probable cause any person who, as a result of a mental disorder, is a danger to himself or herself, or to others, or who is "gravely disabled". The person may be detained at a mental health facility for purposes of evaluation and treatment for up to 72 hours. (Cal. Welf. & Inst. Code, § 5150.)

"Gravely disabled" refers to a person who, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter. People are not gravely disabled if they can provide for their basic needs with assistance from others, such as family or friends. (Cal. Welf. & Inst. Code, §§ 5008 and 5150; *Conservatorship of Early* (1983) 35 Cal.3d 244; and *Conservatorship of Chambers* (1977) 71 Cal.App.3d 277.)

At the end of the 72-hour period, a detained individual must be released if, in the opinion of the professional in charge of the facility, the individual no longer requires evaluation or treatment. An individual can also be referred for further care and treatment on a voluntary basis, certified and detained for further intensive involuntary treatment, or recommended for conservatorship proceedings. (Cal. Welf. & Inst. Code, § 5150 et seq..)

#### D. Certification For Intensive Treatment

A person may continue to be detained for not more than 14 days beyond the initial 72-hour period once he or she is certified for intensive treatment. The certification is given if the following conditions are met:

- the person is gravely disabled or a danger to others, or to himself or herself;
- the facility is certified to provide treatment and will admit the person; and
- the person has been advised of the need for, but has not been willing or able to accept, voluntary treatment.

(Cal. Welf. & Inst. Code, § 5250.)

A person certified for intensive treatment has a constitutional right to an administrative or court hearing to determine if probable cause exists to hold the person for treatment. A certification review hearing must be held within four days of the date on which the person is certified for a period of intensive treatment, unless the person requests judicial review. A person is entitled to have an attorney or advocate assist in preparation for the hearing. The hearing is not adversarial and is conducted in an informal and impartial manner. (Cal. Welf. & Inst. Code, § 5254.)

If the hearing officer decides that there is no probable cause to believe that a person is gravely disabled or a danger to himself or herself, the individual can no longer be detained involuntarily, but may voluntarily remain at the facility. (Cal. Welf. & Inst. Code, § 5256.5; *Doe v. Gallinot* (9th Cir. 1981) 657 F.2d 1017.)

#### E. Judicial Hearing

Every person detained after certification for intensive treatment has a right to a judicial hearing to obtain release from the facility. A person must be informed of this right when a copy of the certification notice is given to him or her. A person must also be informed of his or her right to an attorney.

The hearing must be held promptly. The person will be released if the court finds: (1) that the person is not gravely disabled or a danger to himself or herself, or to others; (2) that the person was not advised of the need for voluntary treatment, or had accepted voluntary treatment; or (3) that the facility cannot provide appropriate treatment. (Cal. Welf. & Inst. Code, §§ 5254.1 and 5275.)

#### F. Involuntary Detention Beyond 14 Days

After the 14-day certification period expires, a person may be involuntarily held for a longer period under certain circumstances. If a person is suicidal as a result of a mental disorder, he or she may be recertified for up to an additional 14-day period. (Cal. Welf. & Inst. Code, § 5260.) If a person presents a demonstrated danger of inflicting substantial physical harm upon others, he or she may be confined for up to 180 days. A judicial

hearing is required in order to extend the detention beyond 14 days. A person has a right to counsel and to a jury trial. If judged to be gravely disabled as a result of a mental disorder, an individual may be involuntarily detained after the certification period only if conservatorship proceedings begin. (Cal. Welf. & Inst. Code, § 5300 et seq.)

#### G. Conservatorship Procedures

A conservator is a person appointed by the court to undertake the responsibility of making decisions for the personal care of a gravely disabled person ("conservatee") or his or her property. A conservator has broad powers, including determining the conservatee's place of residence or the type of treatment he or she will receive. The conservatee loses the ability to make decisions on his or her own behalf and to give legally binding consent. (Cal. Welf. & Inst. Code, § 5357.)

A 30-day temporary conservatorship can be filed after the 14-day certification period if a person is gravely disabled and unwilling to accept voluntary treatment. (Cal. Welf. & Inst. Code, § 5352.1.) During the 30-day period, an investigation is made to evaluate the person's suitability for conservatorship. Conservatorship is recommended only if there are no suitable alternatives available.

A court hearing takes place before a permanent conservatorship can be established. A person is entitled to a court or jury trial to determine whether he or she is gravely disabled. (*Waltz v. Zumwalt* (1985) 167 Cal.App.3d 835.) A person has a right to representation by an attorney. Grave disability must be proved beyond a reasonable doubt by a unanimous jury. (*Conservatorship of Roulet* (1979) 23 Cal.3d 219.) A court order establishing a conservatorship may be appealed, and counsel must be appointed to assist indigent clients. Conservatorships expire automatically after one year, but can be renewed. (Cal. Welf. & Inst. Code, §§ 5360, 5361.)

A conservator is obligated to place the conservatee in the least restrictive placement. If the conservatee cannot be placed with family or relatives, priority is given to a suitable placement near his or her family's or relatives' home. (Cal. Welf. & Inst. Code, § 5350 et seq.; *Conservatorship of Chambers* (1977) 71 Cal.App.3d 277.)

#### H. Mental Health Advocacy Programs

The state Department of Mental Health has a Patients' Rights Office, which is responsible for ensuring that mental health laws, regulations, and policies on the rights of recipients of mental health services are observed in state hospitals and community care facilities.

The Patients' Rights Office trains county patients' rights advocates. The county patients' rights advocates may conduct investigations if there is probable cause to believe that the rights of a mentally disabled person have been violated. A client may refuse the advocate's services.

## DIRECTORY OF SERVICES

### INTRODUCTION

This general directory lists various legal services and organizations which may be of assistance to disabled people. It is by no means a complete directory of services. We have included agencies and organizations which are referred to in the text of this handbook, as well as some legal services organizations which provide primary assistance to disabled people. Many organizations listed below -- such as independent living centers and regional centers -- can refer you to other groups which may be able to help you.

Many of the government agencies mentioned in this book and directory have local branch offices. The phone numbers for these offices can be found in the government listings at the beginning of your phone directory, and we have therefore not included all of them here.

Finally, always be sure to call an agency or organization ahead of time to find out about accessibility, hours of operation, and whether an appointment is necessary.

### I. LEGAL SERVICES

Listed below are some organizations which specialize in providing free or low-cost legal services for disabled people. This is not a complete list, but is representative of the range of groups offering such services. In addition, most county or local bar associations have a lawyer referral service which can put you in touch with an attorney who specializes in the kind of law you need. Look in your phone book under:

"Lawyer Referral Service - State Bar of California"

The Legal Services Section of the State Bar of California also publishes a directory entitled "Legal Service Programs for Persons With Disabilities in California." Their address and phone number is:

The Legal Services Section, Committee on  
Legal Rights of Disabled Persons  
State Bar of California  
555 Franklin Street  
San Francisco, CA 94102-4498  
Telephone: (415) 561-8250

Local legal aid societies and legal services corporations (listed in your phone book under "legal aid" or "legal services") provide general legal assistance at little or no cost, and often handle problems particular to disabled people. Finally, Independent Living Centers and regional centers (listed in this directory under "Programs and Services") can usually provide assistance and referrals for legal services.

#### Specific Legal Organizations:

##### Northern California

Adult Independence Development Center  
1601 Civic Center Drive, Suite 100  
Santa Clara, CA 95050  
Telephone: (408) 985-1243

Legal Center for the Elderly and the  
Disabled  
1605 Dreher Street  
Sacramento, CA 95814  
Telephone: (916) 446-4851  
(916) 446-6259

Mental Health Advocacy Project

Disability Rights Education and Defense Fund (DREDF) 2212 Sixth Street Berkeley, CA 94710 Telephone: (510) 644-2555 (Voice) (510) 644-2626 (TTY) (510) 644-2654 (FAX) (800) 466-4232 (ADA Hotline)	111 W. St. John Street San Jose, CA 95113 Telephone: (408) 294-9730  Mental Health Advocates 1801 Adeline Street, Room 211 Oakland, CA 94607 Telephone: (510) 835-5532
Disability Rights Advocates 1999 Harrison Oakland, CA 94612 Telephone: (510) 273-8644	Protection and Advocacy 449 15th Street #401 Oakland, CA 94612 Telephone: (800) 776-5746 (510) 839-0811
Family Caregiver Alliance 425 Bush Street, Suite 500 San Francisco, CA 94108 Telephone: (415) 434-3388 (415) 434-3508 (FAX)	People for People 499 Leslie Street Ukiah, CA 95482 Telephone: (707) 468-5882
Humboldt Access Project, Inc. 812 6th Street Eureka, CA 95501 Telephone: (707) 445-8404 (Voice, TTY)	Legal Center for the Elderly 937 Spring Street Placerville, CA 95667 Telephone: (916) 621-6155
Legal Aid Society of San Francisco Employment Law Center Disability Employment Rights Project 1663 Mission Street, Suite 400 San Francisco, CA 94103 Telephone: (415) 864-8848 (415) 864 8199 (FAX)	

#### Southern California

Community Service Center for the Disabled 1295 University Avenue, Suite 10 San Diego, CA 92103 Telephone: (619) 293-3500	Western Law Center for Disabled Rights 919 South Albany Street Los Angeles, CA 90015 Telephone: (213) 736-1031
Mental Health Advocacy Services, Inc. 1336 Wilshire Blvd., Suite 102 Los Angeles, CA 90017 Telephone: (213) 484-1628 (Voice) (213) 489-3171 (TTY)	

## II. EMPLOYMENT

### California

Department of Fair Employment and Housing, with offices in Bakersfield, Fresno, Los Angeles, Oakland, Sacramento, San Bernardino, San Diego, San Francisco, San Jose, Santa Ana, Ventura, Salinas, and El Centro. (800) 884-1684

### Federal

Equal Employment Opportunity Commission, with offices in San Francisco, Los Angeles, San Diego, Fresno, Bakersfield, El Centro, Oakland, Salinas, San Bernardino, San Jose and Ventura. Documents: (800) 669-3362 (Voice); (800) 800-3302(TDD). Questions: (800) 669-4000 (Voice); (800) 800-6820(TDD).

Office of Federal Contract Compliance, Department of Labor

San Francisco: (415) 975-4720

## III. HOUSING

### Federal

U.S. Department of Housing and Urban Development, with offices in Los Angeles, San Francisco, and Sacramento.

### State

State Department of Housing and Community Development, with offices in Sacramento, Eureka, Fresno, Redding, San Jose, San Luis Obispo, Santa Rosa, Santa Ana, El Centro, La Mesa, San Bernardino, Ventura, and Winnetka.

State Housing Finance Agency, with offices in Sacramento, San Francisco, and Culver City.

Local Housing Authority

Department of Fair Employment and Housing (see Employment): (800) 884-1684.

## IV. NONDISCRIMINATION IN BUSINESSES AND SERVICES

### Insurance discrimination:

Contact the State Commissioner of Insurance, with offices in Sacramento, San Francisco, Los Angeles, San Diego, and Vallejo.

### Licensed services:

Contact the State Department of Consumer Affairs in Sacramento at (800) 344-9440 or at (916) 445-1254 and ask for the board that licenses the type of service with which your complaint is concerned.

### Public Services and Accommodations

Department of Fair Employment and Housing (see Employment: (800) 884-1684.

## V. ACCESS

### Buildings and Facilities

#### General Information:

Equal Opportunity Programs Division  
One City Hall Plaza, 11th Floor  
Oakland, CA 94612  
Telephone: (510) 444-2489 (Voice/TTY)

State:

State Department of General Services, Disabled Access Compliance, at (916) 445-6285

State Department of Rehabilitation (see list of offices in this directory under "Programs and Services")

City or county building departments

Federal:

Architectural and Transportation Barrier Compliance Board

1331 F Street NW #1000

Washington, D.C. 20004

Telephone: (202) 272-5434  
(202) 272-5449 (TDD)  
(800) USA-ABLE  
(800) 872-2253 (Voice)  
(800) 993-2822 (TDD)

Transportation

Local Department of Motor Vehicles

U.S. Department of Transportation, with offices in Sacramento, San Diego, Los Angeles, and San Francisco.

ADA documents and general questions: (202) 366-1656 (Voice); (202) 366-4567 (TDD). ADA legal questions: (202) 366-1936 (Voice/relay). Complaints and enforcement: (202) 366-2285 (Voice); (202) 366-0153 (TDD). Project ACTION: (800-659-6428 (Voice/relay); (202-347-3066 (Voice); (202-347-7385 (TDD).

Telecommunications

Local phone company

State Public Utilities Commission (PUC)

San Francisco office: (415) 703-2782  
(415) 703-2032 (TTY)

Los Angeles office: (213) 897-2973  
(213) 987-0426 (TTY)

Check your phone directory for PUC field offices located throughout the state.

ADA Compliance

Federal Communications Commission

ADA documents and general questions  
(202) 418-0190 (Voice)  
(202) 418-2555 (TDD)

The U.S. Dept. of Justice ADA Hotline:  
(202) 514-0301 (Voice) or  
(202) 514-0383 (TDD)

(Will answer questions and provide information about ADA.  
Disability Rights Education and Defense Fund  
(DREDF) ADA Hotline:  
(800) 466-4ADA (Voice/TDD)

ADA legal questions  
(202) 418-2357 (Voice)  
(202) 418-0484 (TDD)

Will provide information and consultation on the requirements of the ADA.



Architectural and Transportation Barriers  
Compliance Board  
5th Floor, 1111 18th St., N.W.  
Washington, DC 20036

(800) USA-ABLE  
(202) 653-7848

Provide technical assistance, informational and technical manuals.  
Also will provide the ADAAG.

The President's Committee on Employment of  
People with Disabilities  
1331 F. Street, N.W., Suite 302  
Washington, D.C. 20004-1107

(202) 376-6200

Provides a kit of ADA information. Also operates Job  
Accommodation Network: (800) ADA-556-7234 (Voice or  
TDD), which provides information to employers about accessible  
accommodations for employees.

Paralyzed Veterans of America  
National Advocacy Program  
801 18th St., N.W.  
Washington, D.C. 20006

(202) 872-1300

Can direct you to PVA programs in your area that will assist you  
with access issues relating to ADA.

Coordination and Review Section Civil Rights  
Division.

U.S. Dept. of Justice  
P. O. Box 6618  
Washington, DC 20035

(202) 434-9300

Provides technical assistance guides about assistive listening  
devices, open captioning of film, telephone devices for the deaf,  
etc.

## VI. EDUCATION

State Department of Education  
Special Education Division  
Service Assurance/Compliance Unit  
515 L Street #270  
Sacramento, CA 95814  
Telephone:

(916) 445-4613  
(916) 327-3718 (TTY)

Community Alliance for Special Education  
(CASE) (a non-profit organization which will  
provide educational planning, attend IEP  
meetings, and represent clients at conferences  
and hearings)  
1031 Franklin Street, Suite B-5  
San Francisco, CA 94109  
Telephone: (415) 928-2273

## VII. PROGRAMS AND SERVICES

IHSS: Contact your county Social Services Agency

### Community Mental Health Services

Contact your county Mental Health Services office

### Hearing-Impaired Services

California Department of Social Services  
Office of Deaf Access  
744 P Street, M.S. 19-91  
Sacramento, CA 95814  
Telephone: (916) 229-4573  
(916) 229-4577 (TTY)

### Rehabilitation Services

Following is a list of the district offices of the Department of Rehabilitation. These offices can direct you to the local office nearest you.

Anaheim:	(714) 935-2916 (714) 935-2632 (TTY)	Riverside:	(909) 782-6650 (909) 320-2061 (TTY)
Fresno:	(209) 445-6011 (209) 266-3373 (TTY)	Sacramento:	(916) 322-8500 (916) 322-8612 (TTY)
Long Beach:	(310) 422-8325 (310) 422-9276 (TTY)	San Bernardino:	(909) 383-4401 (909) 885-0028 (TTY)
Los Angeles:	(213) 736-3904 (213) 736-3915 (TTY) (310) 649-1710 (213) 779-5171	San Diego:	(619) 495-3600 (619) 495-3648 (TTY)
Norwalk:	(310) 864-8521 (310) 693-2964 (TTY/Whittier Office)	San Francisco:	(415) 904-7100 (Voice/TTY)
		San Jose:	(408) 277-1355 (408) 277-1043 (TTY)
Oakland:	(510) 286-0511 (510) 286 3750 (TTY)	Santa Barbara:	(805) 681-8700 (805) 681-8730 (TTY)
Pasadena:	(818) 304-8300 (Voice/TTY)	Santa Rosa:	(707) 576-2233 (707) 542-6365 (TTY)
Pleasant Hill:	(510) 689-3010 (510) 676-5623(TTY)	Van Nuys:	(818) 901-5024 (818) 901-5085 (TTY) (818) 901-5086 (TTY)

Independent Living Centers

Northern California

Center for Independence of the Disabled  
875 O'Neill Avenue  
Belmont, CA 94002  
Telephone: (415) 595-0783 (Voice)  
(415) 595-0787 (TTY)  
(415) 595-0261 (FAX)

Center for Independent Living  
2539 Telegraph Avenue  
Berkeley, CA 94704  
Telephone: (510) 841-4776 (Voice)  
(510) 848-3101 (TTY)  
(510) 841-6168 (FAX)

Northern California Independent Living Program  
555 Rio Lindo Avenue, Suite B  
Chico, CA 95926  
Telephone: (916) 893-8527

Humboldt Access Project  
235 Fourth Street Suite A  
Eureka, CA 95501  
Telephone: (707) 445-8404

Community Resources for Independent Living,  
Inc.  
439 "A" Street  
Hayward, CA 94541  
Telephone: (510) 881-5743 (Voice/TTY)

Resources for Independent Living  
1211 "H" Street, Suite B  
Sacramento, CA 95814  
Telephone: (916) 446-3074 (Voice/TTY)  
(916) 446-2443 (FAX)

Independent Living Resource Center  
of San Francisco  
70 Tenth Street  
San Francisco, CA 94103  
Telephone: (415) 863-0581  
(415) 863-1367 (TTY)  
(415) 863-1290 (FAX)

Marin Center for Independent Living  
710 Fourth Street  
San Rafael, CA 94901  
Telephone: (415) 459-6245

Adult Independence Development Center  
1601 Civic Center Drive, Suite 100  
Santa Clara, CA 95050  
Telephone: (408) 985-1243  
(408) 985-9243 (TTY)  
(408) 985-0671 (FAX)

Community Resources for Independence  
2999 Cleveland Ave. South, Suite D  
Santa Rosa, CA 95403  
Telephone: (707) 528-2745  
(707) 528-2151 (TTY)  
(707) 528-9477 (FAX)

Southern California

Dayle McIntosh Center for the Disabled  
150 West Cerritos Avenue, Building 4  
Anaheim, CA 92805

Telephone: (714) 772-8285  
(714) 772-8366 (TTY)  
(714) 772-8292 (FAX)

Rolling Start, Inc. Independent Living Center  
1680 South E Street  
San Bernardino, CA 92408

Telephone: (909) 884-2129 (Voice)  
(909) 884-7396 (TTY)

Southern California Rehabilitation  
Services  
12458 Rives Avenue, Room 202  
Downey, CA 90242

Telephone: (310) 862-6531  
(310) 923-5274 (FAX)

Victorville Office:  
14935 Circle Drive  
Victorville, CA 92392

Telephone: (619) 241-3390

CAPH ILC  
(California Assoc. for the Physically  
Handicapped - Independent Living Ctr.)  
1617 E. Saginaw, Suite 109  
Fresno, CA 93704

Telephone: (209) 222-2274  
(209) 223-2396 (TTY)  
(209) 222-1309 (FAX)

The Access Center of San Diego, Inc. (TAG)  
1295 University Avenue #10  
San Diego, CA 92103

Telephone: (619) 293-3500 (Voice)  
(619) 293-7757 (TTY)

Independent Living Resource Center  
423 West Victoria

Santa Barbara, CA 93101  
Telephone: (805) 963-0595 (Voice/TTY)

Disabled Resources Center  
2750 E. Spring Street, Suite 100  
Long Beach, CA 90806

Telephone: (310) 427-1000  
(310) 427-1366  
(310) 427-2027 (FAX)

Independent Living Center of Southern  
California  
14402 Haynes Street  
Van Nuys, CA 94101

Telephone: (818) 988-9525  
(818) 785-7097 (TTY)

Community Rehabilitation Services  
4716 Cesar Chavez Avenue, Building B  
Los Angeles, CA 90022

Telephone: (213) 266-0453  
(213) 780-7986 (FAX)

### Developmental Disabilities Area Boards

Organization of Area Boards  
3000 S Street, Suite 210  
Sacramento, CA 95816-7055  
Executive Director - Carol J. Risley  
Telephone: (916) 227-2148

Area II  
1367 East Lassen Avenue #B-3  
Chico, CA 95926  
Telephone: (916) 895-4027  
Acting Executive Director - Robin Keehn

Area IV  
236 Georgia Street, Suite 201  
Vallejo, CA 94590  
Telephone: (707) 648-4073  
Executive Director - Alan Kerzin

Area VI  
250 Cherry Lane, Suite 113  
Manteca, CA 95336  
Telephone: (209) 239-6700  
Executive Director - Robert Phillips

Area VIII  
4840 N. First Street, Suite 110  
Fresno, CA 93726  
Telephone: (209) 222-2496  
Executive Director - Joseph Bowling

Area X  
4146 Lankershim Blvd. #400  
North Hollywood, CA 91602  
Telephone: (818) 508-2260  
Executive Director - Roberta Newton

Area XII  
1960 Chicago Avenue, Suite E-8  
Riverside, CA 92507  
Telephone: (909) 781-0722  
Executive Director - Ace Atkinson

Area I  
P. O. Box 245  
Ukiah, CA 95482  
Telephone: (707) 463-4700  
Executive Director - Tom Montesonti  
Fax No.: (707) 463-4752

Area III  
2025 Hurley Way, Suite 105  
Sacramento, CA 95825  
Telephone: (916) 263-1150  
Executive Director - Michael Rosenberg

Area V  
360 22nd Street, Suite 730  
Oakland, CA 94612  
Telephone: (510) 286-0439  
Executive Director - Rocio Smith

Area VII  
P.O. Box 4540  
Santa Clara, CA 95056-4540  
Telephone: (408) 988-0111  
Executive Director - Virginia Grant

Area IX  
7127 Hollister Ave., Suite 22  
Goleta, CA 93117  
Telephone: (805) 685-8395  
Executive Director - Julia Barnes

Area XI  
250 S. El Camino Real, Suite 110  
Tustin, CA 92680  
Telephone: (714) 731-4787  
Executive Director - Rhys Burchill

Area XIII  
4711 Viewridge Ave., Suite 160  
San Diego, CA 92123  
Telephone: (619) 637-5563  
Executive Director - Leslie Morton

## Regional Centers

<u>Regional Center</u>	<u>Counties Served</u>
Alta California Regional Center 2031 Howe Avenue, Suite 100 Sacramento, CA 95825 Telephone: (916) 924-0400 (Voice/TTY) (916) 929-1036 (FAX)	Alpine, Colusa, El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, Yuba
Central Valley Regional Center 5168 N. Blythe Fresno, CA 93722 Telephone: (209) 276-4300 (209) 276-4441 (TTY)	Fresno, Kings, Madera, Mariposa, Merced, Tulare
Far Northern Regional Center P. O. Box 492418 Redding, CA 96049-2418 1900 Churn Creek Road, Suite 319 Redding, CA 96002 Telephone: (916) 222-4791 (Voice/TTY)	Butte, Glenn, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama, Trinity
Golden Gate Regional Center 120 Howard Street, 3rd Floor San Francisco, CA 94105 Telephone: (415) 546-9222 (Voice/TTY)	Marin, San Francisco, San Mateo
Inland Counties Regional Center P. O. Box 6127 (92412) (Mailing Address) 674 Brier Drive, (For Federal Express Only) San Bernardino, CA 92408 Telephone: (909) 890-3000 (Voice/TTY)	Inyo, Mono, Riverside, San Bernardino
Kern Regional Center P. O. Box 2536 (93303) 3200 North Sillect Avenue Bakersfield, CA 93308 Telephone: (805) 327-8531 (805) 327-1251 (TTY)	Kern
North Bay Regional Center 10 Executive Ct., Suite A Napa, CA 94558 Telephone: (707) 256-1100 (Voice) (707) 252-0213 (TTY)	Napa, Solano, Sonoma
Redwood Coast Regional Center 1116 Airport Park Blvd. Ukiah, CA 95482 Telephone: (707) 462-3832	Del Norte, Humboldt, Mendocino, Lake

Developmental Disability Center  
of Orange County  
Central Tower, Union Bank Square  
530 South Main  
Orange, CA 92868  
Telephone: (714) 973-1999  
(714) 667-6021 (TTY)

Orange

Regional Center of the East Bay  
1212 Broadway, Suite 200  
Oakland, CA 94612  
Telephone: (510) 451-7232

Alameda, Contra Costa

San Andreas Regional Center  
(Federal Express only)  
300 Orchard City Drive, Suite 170  
Campbell, CA 95008  
Mailing Address:  
P. O. Box 50002  
San Jose, CA 95150-0002  
Telephone: (408) 374-9960

Monterey, San Benito, Santa Clara, Santa Cruz

San Diego Regional Center  
4355 Ruffin Road, Suite 206  
San Diego, CA 92123  
Telephone: (619) 576-2996  
(619) 292-5821 (TTY)

Imperial, San Diego

Tri-Counties Regional Center  
5464 Carpinteria Ave., Suite B  
Carpinteria, CA 93013  
Telephone: (805) 684-1204  
(805) 684-8212 (TDD)

San Luis Obispo, Santa Barbara, Ventura

Valley Mountain Regional Center  
(Federal Express only)  
7109 Danny Drive  
Stockton, CA 95210  
Mailing Address:  
P. O. Box 692290  
Stockton, CA 95269-2290  
Telephone: (209) 473-0951  
(209) 478-3422 (TTY)

Amador, Calaveras, San Joaquin, Stanislaus,  
Tuolumne

Eastern Los Angeles Regional Center  
1000 South Fremont Avenue, Bldg. A-3  
Alhambra, CA 91802 (Federal Express Only)  
Mailing Address:  
P. O. Box 7916  
Alhambra, CA 91802-7916  
Telephone: (818) 299-4700  
(818) 299-4776 (TTY)

Alhambra, East Los Angeles, Northeast,  
Whittier

Frank Lanterman Regional Center  
3440 Wilshire Blvd., Suite 400  
Los Angeles, CA 90010  
Telephone: (213) 383-1300

Central, Glendale, Hollywood-Wilshire,  
Pasadena

Harbor Regional Center  
Del Amo Business Plaza  
21231 Hawthorne Blvd.  
Torrance, CA 90503  
Telephone: (310) 540-1711

Bellflower, Harbor, Long Beach, Torrance

North Los Angeles County  
Regional Center  
15400 Sherman Way, Suite 300  
Van Nuys, CA 91406  
Telephone: (818) 778-1900

East Valley, San Fernando, West Valley

San Gabriel-Pomona Regional Center  
761 Corporate Center Drive  
Pomona, CA 91768  
Telephone: (909) 620-7722

El Monte, Monrovia, Pomona

South Central Los Angeles  
Regional Center  
2160 West Adams Blvd.  
Los Angeles, CA 90018  
Telephone: (213) 734-1884  
(213) 734-1884 (TDD)  
(Same number switches to machine)

Compton, San Antonio, South, Southeast,  
Southwest

Westside Regional Center for the  
Developmental Disabled  
5901 Green Valley Circle, Suite 320  
Culver City, CA 90230  
Telephone: (310) 337-1155

Inglewood, Santa Monica-West

In addition to regional centers, several private, non-profit organizations primarily assist people with developmental disabilities, and may be able to direct you to a service you need. Two of these groups are:

Alameda County Developmental Disabilities  
Planning and Advisory Council  
160 Franklin Street, Suite 205  
Oakland, CA 94607  
Telephone: (510) 268-2732

Family Resource Network  
5232 Claremont Ave.  
Oakland, CA 94618  
Telephone: (510) 547-7322  
(510) 658-2307 (TDD)



## IX. BENEFITS

### Income Benefits

#### SSI/Social Security Disability:

Contact your local Social Security Administration office

#### State Disability:

Contact your local Employment Development Department

#### General Assistance, Food Stamps, Guide Dog Allowances, AFDC:

Contact your county Social Service Agency

### Tax And Business Benefits

#### Property tax/Renter's Assistance:

Contact the Franchise Tax Board (main office is in Sacramento, with branch offices throughout the state)

#### Property Tax postponement:

Contact the State Controller in Sacramento at (916) 445-3028

#### Business Loans:

Contact the federal Small Business Administration, with offices in San Francisco, Sacramento, Fresno, Los Angeles, and San Diego.

## IX HEALTH CARE

### Medicare:

Contact your local Social Security Administration office

### Medi-Cal:

Contact your county Social Services Agency

### California Children's Services:

Contact your local California Children's Services office

### Right to medical treatment:

Contact the State Department of Consumer Affairs Medical Board in Sacramento at (800) 633-2322.

### Infant Care:

Contact your county Children's Protective Services

X. CIVIL RIGHTS OF PERSONS WITH MENTAL  
AND DEVELOPMENTAL DISABILITIES

County Rights Advocates:

Contact the Patients' Rights office of your County Mental Health Services.

See listing of Regional Centers and Developmental Disability organizations under "Programs and Services" in this directory.